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ABSTRACT

In this statement, structural and operational aspects of licensing by welfare departments are analyzed. The philosophy of licensing, and the underlying principles are defined and the licensing of child care facilities is presented as a preventive social service in the form of legal regulation. A comprehensive discussion of child care licensing is contained in the following chapters: Child Care Licensing; The Statutory Basis; The Formulation of Licensing Standards; Administrative Organization; Application, Study, and License Issuance; Supervision-Consultation; and The Achievement of Licensing Goals. A historical note provides background on the development of child care licensing. This publication should be of use to state welfare administrators and staffs in improving their licensing programs, to legislators in drafting licensing statutes, to citizens serving on boards and advisory committees of welfare agencies, and to social work educators. (Author/NH)

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LICENSING *of* CHILD CARE FACILITIES *by* STATE WELFARE DEPARTMENTS

a conceptual statement

PS 003659

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foreword

Private facilities entrusted with the care of children, such as institutions and day care centers, are licensed by welfare departments or other agencies in order to be sure that they meet established standards of care. Child care licensing is of increasing importance because more and more children are being cared for in child care facilities, especially in day care centers and homes. Yet little has been published that deals in depth with the philosophy and practice of licensing child care facilities. The Children's Bureau believes that ***Licensing of Child Care Facilities by State Welfare Departments*** will make a major contribution here.

The author, Norris Class, is the foremost authority in the United States on child care licensing. He has spent many years in researching, formulating, and testing the concepts that he presents in this publication. He has selected and organized principles from law, social work, and administration in order to provide a framework for understanding child care licensing.

In presenting licensing as a positive application of police power and a form of regulatory administration, he gives it a firm policy base. In presenting licensing as a preventive social service, he brings it into line with much of the new philosophy in the field of social work.

This publication is an outstanding example of how education and government can work together: doctoral studies provided much of the research and analysis from which the concepts presented were derived; personal observation and interviewing on the part of Children's Bureau staff in selected States tested these against the reality of practice.

The audience of the publication includes various groups with a concern for adequate care of children outside their own homes. State welfare administrators and their staffs should find it highly useful in improving their licensing programs. It will be helpful to legislators in drafting licensing statutes and to citizens serving on boards and advisory committees of welfare agencies. The conceptual basis for licensing that is presented, and the description of skills that licensing workers need, will certainly be valuable to social work educators. In several important ways, therefore, this publication forecasts the possibilities for developing child care licensing on a much higher plane.

P. Frederick Delliquadri

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Chief, Children's Bureau
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author's acknowledgments

In formulating this Statement I have at many points incorporated material from the writings of colleagues and social work students doing research in the area of welfare licensing. I have especially drawn on the work of five persons:

GERTRUDE BINDER, *Director of the Bureau of Adult Institutions, New York State Department of Social Services*

BOYD OVIATT, *Associate Dean, School of Social Work, University of Denver*

HAROLD JAMBOR, *Professor, School of Social Work, University of Hawaii*

LELA COSTIN, *Associate Professor, Jane Addams Graduate School of Social Work, University of Illinois*

SINDHU PHADKE, *Senior Lecturer, Delhi School of Social Work*

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NORRIS E. CLASS

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I. CHILD CARE LICENSING

The primary legislative thought in licensing is not prohibition but regulation to be made effective by the formal general denial of a right which is then made individually available by an administrative act of approval, certification, consent or permit . . .

ERNST FREUND

ONE of the most significant social facts of 20th century America is the ever-increasing number of children receiving out-of-home care. As out-of-home care has increased, so has public regulation of it in the form of licensing. The purpose of this Statement is to analyze the structural and operational aspects of child care licensing as carried out by welfare departments. The Statement is intended to provide, through the formulation of concepts derived from history, observation, empiric analysis, and speculation, a theoretical framework for dealing with the practical problems of administration.

Licensing of child care facilities is generally a responsibility of the State welfare department; in some parts of the country health or education departments have licensing responsibility. Although this Statement is intended primarily for public welfare administrators, many of the general principles discussed are applicable to any agency with child care licensing functions.

No attempt is made here to analyze the causes of the increase in out-of-home care of children, although there is great need for such analysis. Neither is there any attempt made to sell child care licensing as a child welfare service. It seems clear that if child care licensing is to become a vital positive program, a well-integrated part of the American child welfare system, much more interpretation of and making the case for child care licensing will have to take place. Here, however, understanding of the need for child care licensing is assumed. With consideration restricted to structure and operation, hopefully the Statement will make a contribution to better understanding of child care licensing as a public social service distinct from other public social services for children, albeit interrelated with them.

This first chapter is devoted to clarifying the focus of the Statement by defining what is meant by child care facility, examining the heightened importance of child care licensing today, and citing some basic principles underlying administration of child care licensing. Chapters 2, 3, and 4 then take up the structural aspects of the licensing responsibility (statutory basis, formulation of standards, administrative organization). The remaining three chapters are concerned mainly

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with the operation of licensing programs. For readers who wish to have some background on the development of child care licensing in the United States, a historical note is appended.

Definition of child care facility

The definition of a child care facility, for the purpose of licensure, is based on two criteria. First, the facility provides or proposes to provide care to children apart from their parents for all or a part of the 24-hour day, and assumes certain responsibilities normally carried by parents. Secondly, the facility itself must be legally eligible to seek licensure and possess the autonomy necessary to comply with licensing requirements.

The term "facility" as used here includes people, operations, structure, and materials. Thus while much professional and vocational licensing is directed to persons and occupational competence, child care licensing also includes buildings, food, bedding, playthings, etc. In short, "facility" as used in child care licensing covers administration, program, and plant.

The facilities may be divided into four major types: full-time foster family care, full-time group care, family day care, and group day care. In formulating this classification, the two basic dimensions of child care were held to be time and place or social locale (see chart). Only these two dimensions were used in order to avoid spreading the focus over a multiplicity of types of facilities. In child care licensing, it is possible to take in other dimensions, such as type of problem dealt with, through the conditions attached to the license and through accreditation by specialized departments, such as the mental health agency. Welfare licensing tends to have considerably more flexibility in conditioning the license than other areas of licensing.

TYPES OF CHILD CARE FACILITIES

Place	Time	
	Full 24-hour care	Less than 24-hour care
Family Setting	1. Foster family care.	3. Family day care.
Non-Family or Group Setting	2. Group care (includes institutions and group homes).	4. Group day care (includes day care centers and group homes).

Group homes present a problem in respect to the fourfold classification of child care facilities. Although they are something of a hybrid, with some characteristics of the family setting and some of the group setting, at least at this time they seem more appropriately placed in the non-family, group setting quadrants.

Although the focus of this Statement is on the licensing of child care facilities, it is important to keep in mind that licensing of child-placing agencies is also a responsibility of most State welfare departments. Strictly speaking, a child-placing agency is not a form of child care, but its licenseability depends on its meeting standards in one or more of the basic categories of child care. Many State child-placing license laws provide for excluding certain facilities, such as foster homes, from licensing when the child-placing agency itself is licensed. This attests to the conclusion that the purpose of licensing the child-placing agency is the regulation of the child care activity, not of the agency itself. There are similar approaches in which the responsible individual or agency is licensed, but the purpose is regulation only of the child care activity and not of all the other functions of the person or agency. Examples are the family and child welfare agency, and the church which operates a day care facility.

Opinion and practice are divided as to whether the child-placing agency should be held accountable, as the responsible administrative body, for all its child care activity or whether there should be separate licensure of each of its facilities. Sound administration seems to dictate holding the agency responsible by issuing a single agency license rather than separate licenses for each of its facilities, such as its foster family homes.

Increase in administrative concern [1]

In its early development, licensing of child care facilities was not too demanding in terms of departmental time and attention. Today, it is taking on ever-increasing administrative significance. A variety of reasons accounts for this increasing concern. First, child care licensing activity has greatly expanded. Not only is there increased licensing activity in respect to the more traditional child care programs, but relatively new services such as day care have been brought under the jurisdiction of child care licensing. A provision of the 1962 amendments to the Social Security Act which required licensing or approval of day care facilities which receive any Federal child welfare funds as payment for service greatly increased the "business" of all licensing agencies. A 1967 amendment to the Economic Opportunity Act requires the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity to take all necessary

[1] This section is partly derived from a teaching document by Class and Binder, *The Licensing Responsibility in Public Welfare* (see bibliography).

steps to coordinate programs under their jurisdictions which provide day care, with a view to establishing insofar as possible a common set of program standards, regulations, and mechanisms for coordination at State and local levels. These requirements, which must be met as a condition for purchase of child day care from licensed philanthropic or proprietary day care facilities, virtually mandates the coordination of licensing standards and the standards developed by the public agency for those facilities contractually related to it or which it owns or operates. There are implications, also, for nationwide training programs for licensing and child placement personnel.

A second reason for the increased administrative concern with child care licensing in public welfare departments is a shift in the kinds of applications licensing agencies are receiving. Initially, most of the applicants were *voluntary and philanthropic in nature, spon*sored by religious or benevolent organizations and supported by voluntary contributions. They came into existence as a consequence of religious and humanitarian impulses, in response to the plight of children deprived of their parents and in need of care. Such agencies are characterized by board organizations, the influence of a membership or parent agency on their policies, and commitment to particular theories and methods of child care. In consequence of their origins and auspices, their relationship to licensing administration has included (1) some resistance to State supervision on the premise of violation of the principle of separation of church and State, or because of belief that the voluntary agency was above any need for regulation, but (2) general acceptance of State supervision because their objectives were compatible with the State's responsibility to protect children and assure their healthy growth and development.

Now the situation has changed. Applicants who operate on a business basis outnumber those organized as nonprofit agencies. Most of these facilities provide day care and were established largely in response to the rise in numbers of working mothers. They are financed typically by fees paid by parents, although some are financed in part by industry and organized labor. Some are small and are operated in family homes, but others are large-scale enterprises, characterized by incorporation and other business-like attributes. Commercial operators sometimes resist licensing because standards such as the requirement of a certain amount of space per child may limit their income. But in general they accept licensing because they want to provide care of good quality and because licensing is a protection against the competition of substandard facilities charging lower fees.

There are implications for licensing administration in the fact that now both profitmaking and nonprofit operations make up its universe, calling for an understanding of the differences in their orientations, kinds of incorporation, methods of organization and financing,

and access to learning opportunities in child care. These differences do not affect the level of standards requirements, which are set at the same level for voluntary and proprietary facilities. They do demand of licensing workers a wider knowledge base in administration, community organization, public relations, and the arrangement or provision of child care learning opportunities.

A third factor of administrative concern to public welfare departments, related to the change in type of clientele, is the growth of organizations representing the regulated groups. There are more organizations than ever before, established on the basis of purpose, specialized interest, age group served, or other common factor. The department has responsibility to provide licensing staff skilled in working with these groups—to give information, to help the unorganized to see values in organization, and to give leadership when indicated. In relation to the agencies under voluntary auspices, there is need for the licensing agency to exercise leadership in working with the national agencies in which they hold or should be helped to hold membership. In regard to proprietary day care facilities in particular, licensing personnel must maintain good relationships with organized groups in order to advance their professionalization and secure their cooperation. Finally, the licensing agency should help parents as users of licensed facilities to form their own groups. It should also provide them with consultation on child care and criteria to assist them in selecting and using the most appropriate facility to meet their own and their children's needs.

A fourth aspect of child care licensing which is causing it to attract greater administrative attention in public welfare departments is that, as a result of its increasing magnitude, the licensing responsibility tends to involve numerous interdepartmental relationships. Licensing a child care facility includes setting standards for matters outside the competence or province of staff in public welfare departments. Specialized knowledge is needed from many fields such as public health, fire prevention and safety, recreation, education, child development, mental retardation, and even personnel administration. The welfare department must have a network of cooperative working relationships with a large number of public departments, involving coordination with several levels of government.

The securing and maintaining of productive relationships with these other public agencies take up time and energy of the public welfare staff. This costs money and must be dealt with in the welfare department budget. Also, the service furnished by the other public agencies costs them money and so presents them with budget problems. Thus, there is a need for very careful interprofessional and interagency planning, and the establishment of genuine working relationships if the purpose of licensing is to be realized.

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Five postulates of child care licensing

As the significance of child care licensing grows, its underlying principles and philosophy become increasingly important. Makeshift decisions will not serve as an adequate base for a growing, statewide program that involves a variety of groups in a variety of relationships. The following five postulates or principles might well belong among the fundamentals of an overall policy. They help to delineate the proper role and province of child care licensing and to provide a common basis from which further analysis and policymaking can proceed.

1. Child care licensing should be viewed as a form of regulatory administration. The department having a licensing responsibility in effect regulates behavior and physical conditions. It is a regulatory agency provided by the legislature with quasi-legislative and quasi-judicial methods in order to deal with private activities deemed to have a public purpose. Quasi-legislative agencies are characterized by the right of and the responsibility for the establishment of standards. These standards are in effect little laws in that behavior is prescribed or controlled for those who wish to operate in this area. In its quasi-judicial capacity, the regulatory agency makes decisions to issue or deny licenses on the basis of its findings. In this capacity, it also conducts administrative hearings in grievance situations.

Licensing is characterized by both positive and negative sanctions. To grant a license gives the positive sanctions of approval, authority to operate the facility as requested, and the protection and support of the licensing authority in the responsibilities undertaken. To deny or revoke a license imposes the negative sanctions of disapproval and absence of legal authority to operate the facility as requested. Enforcement may require the application of penalties and, as a last resort, the closing of the facility by administrative ruling or court order. The licensing statute, to assure just and full implementation, must provide for careful consideration of the rights of those who choose to provide child care as well as the welfare of those in care, with guides as to where the individual rights of providers of care must yield to assure the welfare of those in care.

In the light of this basis in regulatory law, policies and practices in child care licensing must be tested for appropriateness, validity, and soundness as regulatory operations. The limitations of the regulatory process must be observed. In fact, not only must procedural provisos of the licensing statute be observed, but in an ever-increasing number of States, the directives of an administrative procedures act must also be followed. Administrative procedures acts prescribe procedures to be followed by administrative agencies to help ensure that their policies, rules and regulations, and decisions meet the tests of constitutionality and due process.

2. Child care licensing is concerned with facilities under private auspices. While facilities under every kind of auspices should meet the same standards, licensing is the appropriate method for seeing that private facilities meet standards, and administrative supervision the appropriate method for agencies under public (governmental) auspices. Historically, licensing has been concerned with the regulation of private enterprise in areas of service affecting public interests.

Private sponsorship may rest with a single individual, a group or association, or legal corporation. Private facilities are further classified as (a) voluntary or philanthropic and (b) proprietary or commercial. Although private, they serve a public purpose: their services are available to the public or certain segments of the public.

The State has the authority to regulate private enterprise for the general welfare. First the public becomes aware of an activity, such as the daytime care of children, the unregulated conduct of which is not in the public interest. Legislation is then enacted to prohibit the activity generally, and an administrative agency is designated to permit the activity specifically, through issuance of licenses. This is the administrative lifting of a legislative prohibition—the essential feature of any licensing operation.

Police power does not apply to the regulation of activities under public auspices. Public child welfare agencies by definition are inappropriate for licensure since their auspices are public—only by a specific legislative act do they come into and go out of existence. It follows that the ultimate negative sanctions of licensing would generally be without force for public agencies. Also, the public agency, apart from its direct services, is expected to implement laws involving the obligation of the State to protect children in out-of-home care. Granting this, the licensing of the public agency by another public agency would tend to confuse the situation by partializing the responsibility.

The public child welfare agency does exercise administrative supervision over its facilities, both those which it owns or operates and those contractually related to it and paid by fees. The agency has controls in the form of selection, supervision, termination, and money payments. The problem of reaching and maintaining standards in public child care programs depends on the development of understanding of standards, fiscal support, and the resources of leadership and personnel.

It may be helpful to have in the licensing statute the proviso that all child care facilities regardless of auspices shall meet the same minimum requirements.

3. Licensing is only one means of securing conformity to standards and the upgrading of service. Other ways are possible and some of

them are already being applied in certain localities in respect to certain categories of child care. Examples of other means are:

(a) An accrediting system with voluntary registration. Such a program might be under voluntary agency auspices. The accreditation process would go beyond license requirements, just as certification by medical boards goes beyond the requirement of the medical license.

(b) Standards for purchase of care that are higher than requirements for licensing might be the means of upgrading child care in many localities. This might be thought of as fiscal regulatory administration.

(c) Replacement of licensing of family-type facilities with a system of official approval of homes receiving children independently placed, as in England under the Child Care Act of 1948. According to this Act, any person wishing to provide child care in his home to children not placed by an agency must receive specific approval for each child. This approval service is carried out by the child care officer following a social investigation of the placement situation. The approach is geared to the particular child's needs; no general approval or license is granted. Thus, there is no accruing of a "vested interest" in the license. Better individualized care and protection might be possible under this approach than through the present system of licensing independent foster family and day care homes.

(d) Required registration of certain types of family facilities plus right of inspection might result in better protection for the time being than a formal licensing system suffering from manpower shortages and possibly community resistance to formal license requirements. Registration would help to establish the magnitude of the problem and thus provide a basis for program planning; it could also constitute a membership roll to which communications regarding child care could be sent by the welfare and cooperating departments.

These methods are described only to suggest that licensing be seen as one of several means of assuring good child care. It is a basic instrument of protection, but without supplementary and complementary operations it may well be administratively overburdened to the point that it fails to achieve its potential.

4. Sound administration requires recognition of the operational differences between child care licensing and child placing. Although licensing and placing are interrelated services, there are marked operational differences which must be recognized, especially in respect to personnel administration.

An analysis of child placement highlights four major tasks: (a) placement diagnosis, (b) handling the separation experience, (c) dealing with problems of congruence or incongruence between the child's own home and that of the caretaker and (d) dealing with the confusion that often occurs over implementation of parental rights when the child is in an out-of-home care situation.

In contrast to child placement, the major tasks of licensing include: (a) interpreting the fact that child care is an activity affecting the public interest and is therefore recognized by the State as an area of regulation; (b) formulating and reformulating licensing standards which will reduce the risk of improper care and enhance the possibility of wholesome care; (c) evaluating each applicant's situation to decide whether or not to issue the license; and (d) supervisory activity to maintain conformity to standards and, usually, consultation to upgrade care.

Too frequently placement and licensing workers are seen as being concerned only with common social problems and needing common knowledge and skills. The failure to define properly the respective jobs of licensing and placement leads to personnel selection and staff development that are inappropriate in relation to the licensing responsibility.

5. Child care licensing is a preventive welfare program. All welfare programs may be classified as treatment, protection, or prevention. Whereas treatment and protective services are oriented to persons currently in need of help, preventive programs are future-oriented. In licensing, facts are assembled to determine whether a facility is so structured and equipped that a person placed there at some future time will receive appropriate care. The child care licensing worker may also attempt to develop a child care situation so that it more effectively reduces risks and is more conducive to wholesome development.

Public appreciation of child care licensing as preventive welfare needs to be developed; undoubtedly it would lead to stronger community support for licensing programs.

II. THE STATUTORY BASIS[1]

Fundamental to the very creation of administrative authority is the fact that its source is legislative . . .

JAMES M. LANDIS

IN HIS DISCUSSION of the contribution of jurisprudence to social science, A. Delafield Smith states that the legal method is the essential framework to which administrative methods should be subservient.[2] To rely on the administrative technique without first creating a firm legal base of individual right and social obligation is like attempting to paint a picture without an underlying conception of it.

The child care licensing law, together with the administrative procedures act, should provide the basic frame within which the administrative agency develops a licensing program. As such, the licensing law must be regarded as a public policy statement in the field of child welfare and, along with the administrative procedures act, a guarantee of constitutionality in the regulated area. Enacted by elected legislators, the law, theoretically at least, expresses the concern of the people that protection be given to children whose welfare cannot be safeguarded without governmental assistance. Such public approval and support is most necessary, since the basic feature of the law is regulation. Moreover, there must be a sufficient number of persons willing and able to meet requirements to make practicable the withholding of licenses from and the closing of substandard facilities.

Like other forms of social legislation, a child care licensing law generally comes into being at the point where a social problem has assumed proportions too large to be controlled by informal, voluntary methods. The need for a public policy on out-of-home child care arises from three basic factors: (1) there are many children who for one reason or other must have out-of-home care, (2) a parent cannot watch closely over his child in out-of-home care—in this situation he is a private individual who lacks the legal authority to freely enter the premises and supervise the activity within, and (3) inability in the parent to set the standards for out-of-home care of his child and to evaluate the care, protection, and program provided—this capacity is of a specialized, professional nature.

[1] The major section of this chapter, "Features of Welfare Licensing Laws," was adapted from a dissertation by Boyd Eugene Oviatt titled "Private Mental Health Licensing Laws," School of Social Work, University of Southern California, 1966.

[2] THE RIGHT TO LIFE. Chapel Hill: University of North Carolina Press, 1955, p. 3.

In approaching the matter of the statutory basis of child care licensing, a fundamental decision must be made in respect to whether the State should have a single generic licensing law or a series of specific licensing laws, each covering a single type of child care, such as family day care, institutional care, day care of the mentally retarded, etc.

The tendency among States is to have a single child care licensing statute. The different types of child care facilities to be covered by a generic licensing law can be enumerated and described under the "definitions" section of the statute. Increasing community interest in highly specialized care may lead to more frequent proposals for enacting specific licensing statutes for specific types of care. The attachment of terms or conditions to the license (see feature 13 below) can achieve virtually the same ends, however. Whether a generic or differential approach is used, certain basic features need to be considered in the development of child care licensing statutes.

Features of welfare licensing laws

A child care licensing law is in many ways similar to other welfare licensing laws, such as those relating to facilities for the aged or mentally ill. From an empiric analysis of welfare licensing laws, 26 general features that are applicable to child care licensing statutes were derived:

1. *Title*

The title should be carefully chosen because it becomes the phrase by which people are initially exposed to the legislation. It should be of sufficient scope, since subject matter not covered by the title could be challenged as not being within the jurisdiction of the law.[3] A proper title might be "Child Care Licensing Act."

2. *Preamble*

A statement of the reasons for passing the licensing law is of value to the licensing authority and reviewing bodies in interpreting the language of the statute.

Since the declaration of policy should influence the interpretation of the statute, careful consideration should be given to its formulation. Preferably, the statement would delineate the objectives of the law broadly, so as to provide for the necessary continuing development of standards and their enforcement.[4]

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[3] Curran, William J.: The Architecture of Public Health Statutes and Administrative Regulation. PUBLIC HEALTH REPORTS, August 1964, Vol. 79, p. 748.

[4] U.S. Department of Health, Education, and Welfare, Social and Rehabilitation Service, Children's Bureau: PROPOSALS FOR DRAFTING PRINCIPLES AND SUGGESTED LANGUAGE FOR LEGISLATION ON PUBLIC CHILD WELFARE AND YOUTH SERVICES. Washington, D.C. (20201): Children's Bureau, 1957, p. 20.

3. *Definitions*

A clear understanding of the law is facilitated by including in the law an exposition of the intended meaning of principal words. Since the definition of terms used controls the application of the regulations, care should be taken in writing these definitions. When a word has been defined, care should be taken throughout the statute to use the word only where the assigned meaning is intended.

4. *Who must be licensed and by whom*

The persons or groups who must obtain a license to operate a child care facility and the authority responsible for enforcement of the licensing requirement must be clearly designated.

Since a licensing law is a legislative directive prohibiting an activity until official permission is given by an administrative agency, there should be no doubt as to who is to observe the order.

5. *Exemptions*

There should be no exemption of facilities from licensing, such as facilities under church or fraternal auspices, facilities located in political subdivisions of a certain class, homes caring for fewer than a certain number of children, etc. But if there are exemptions, they should be clearly stated. They should not violate principles of equal treatment and protection under the law.

6. *Exclusions*

Child care facilities operated by State, county or municipal governments should be excluded from the licensing requirement. However, if such facilities are not covered by programs of supervision-consultation carried out by other departments, provision might be made in the licensing law to permit the licensing agency to provide visitation, consultation, and information services to child care facilities operated under public auspices, including reports to their department heads.

7. *Rulemaking power*

The licensing law should delegate authority to the agency for rulemaking, provide guidelines in respect to standards development, and give direction as to the procedural process to be followed for their promulgation.

It is unreasonable to assume that the law for licensing child care could include detailed directions for achieving the objectives of the licensing program. The desired legislative guidelines for rulemaking may be provided in the form of broad and general standards, or they may be an enumeration of areas subject to regulation, such as administration, program, living quarters. The law should specify the

procedural process to be followed in standards formulation, including who should participate and when and how the participation takes place. It should specify procedures to be observed in the promulgation of rules and regulations or make reference to the State's administrative procedures act, in order to help ensure constitutionality.

8. *Application for license*

The statute should make clear that all persons subject to licensure are responsible for seeking a license. The licensing agency should be authorized to prescribe application forms, require reasonable information, establish pre-application procedures, and provide consultation throughout all phases of the application process.

If a fee is to be charged at the time of application or issuance of a license, provision for this should be in the statute. In most States, establishing and fixing the amount of a fee are functions restricted to the legislature. However, in some statutes there is provision for the administrative agency to waive the fee.

9. *Inspection and investigation of the applicant*

A licensing law is unenforceable without authorization for the administrative agency to verify that minimum standards are met. This requires that the right of entry, inspection, and investigation be delegated to the agency. In child care licensing the investigation may not only include tangible facts but also such intangibles as attitudes of the licensee or staff that could have a detrimental effect on children. The agency should therefore have the right to secure references in order to appraise character, temperament, and capacity for providing constructive child care.

10. *Reasonably prompt decisions*

A person or organization that has properly applied for a license is entitled to a reasonably prompt investigation and decision as to whether a license will be issued or not. Failure to act promptly in effect constitutes denial of the license. Once an applicant has been investigated and found to meet requirements for a license, issuance of the license becomes more of a ministerial act than one that permits discretion upon the part of the department.

11. *Provisional license*

To ensure that the services of facilities that meet licensing standards in the main but not in every detail may still be utilized, the licensing agency should have the authority to issue nonrenewable provisional licenses. A provisional license should not be renewable since the purpose of licensing is to ensure conformity with reasonable rules and regulations for the care and protection of children.

In addition to the provisional license clause, consideration should be given to including a "dispensation proviso." The need for facilities furnishing substantially good child care is so great that it is important that none be eliminated for some temporary or minor reason. Under a dispensation provision the issuing authority may "relax" or slightly modify certain requirements for a facility. To help ensure fair and equal treatment of all persons seeking a license, the basis of the dispensation should be clearly recorded by the licensing agency, and explained in writing to the licensee.

12. *Renewal of license*

The licensee should be assured by the law that the license may be renewed as required. This could be accomplished by stating the specific conditions for renewal. Such a statement would serve to emphasize that termination of the license could take place only for a specified cause.

At present renewals are most frequently for 1-year periods. There is much to be said for a longer period of renewal, especially after a facility has become well-established.

13. *Conditions of the individual license*

The licensing agency should clearly have the authority to condition or specify the terms of the license.

In child care it is most important that the facility have only the number and type of children it may properly accommodate. A license should be valid only with respect to the person and places specified.

14. *Denial or revocation*

The licensing agency should have the power to refuse to issue a license or to revoke a license upon evidence of failure to comply with the provisions of the law, the rules, regulations, or standards promulgated by the agency, or with the terms or conditions of the license.

The enumeration in the law of causes for denial or revocation of a license determines the grounds on which the agency may take such actions. This is why it is important that the law extend the grounds for denial and revocation to include failure to follow the rules, regulations, or standards adopted by the agency, and failure to comply with specific terms of the license.

15. *Hearings*

The applicant or licensee should have the opportunity for a hearing on contested administrative determinations. The law should make provision for a hearing, or designate the applicability of the administrative procedures act or other legislation establishing procedures

for an administrative hearing of a contested decision. Such a provision helps protect the individual's right to due process of law.

16. *Supervision*

The licensing agency needs to be authorized to make supervisory inspections of the facility and its program in order to be held accountable. The scope of licensing supervision should be limited to determining continued conformity with the provisions of the licensing law, the licensing standards, and the conditions of the license. Supervision reduces the necessity for formal enforcement proceedings in achieving the regulatory objective.

17. *Recordkeeping*

Effectiveness in supervision of private child care depends in part on the authority of the licensing agency to require the keeping of records and the submission of reports.

Compliance with specific conditions or terms of the license is as important as conformity to standards generally. Without proper recordkeeping and reporting, determination of compliance with conditions of the license, such as the number and type of children that may be accommodated, is difficult or impossible.

18. *Consultation*

The provision for consultation should be broad enough to include consultation before formal application, during the investigation, and after issuance of the license. This authorization helps extend the role of the licensing agency beyond determining that the facility meets minimum standards.

19. *Advisory council on licensing*

Authorization for the establishment of a departmental advisory council (or committees) facilitates the representation of affected parties, expert opinion, and interest groups in the development and operation of the licensing program and in the formulation of rules, regulations and standards.

The provision for an advisory council might be dealt with in a section on organization of the agency, if such is included in the statute. The distinctive value of the advisory council may be conveyed more effectively by having a separate section on it, however.

The administrator of the department delegated as the licensing authority should appoint an advisory council on licensing and establish the scope of its responsibilities. It should include representatives of those who use the service, those who operate the facility, cooperating official bodies, disciplines knowledgeable in program areas, and concerned citizens.

20. *Certain information to be considered confidential*

A provision which permits the holding of certain information confidential facilitates the full determination of facts upon which to decide the granting or withholding of permission to operate a child care facility.

Much or most of regulatory administration is best conducted in the open. The fact of application, general information as to the structure and operation of the facility, and the nature and conditions of the license should not be confidential. Hearings are conducted openly. Certain information given during the investigation, especially as it may relate to such items as "suitability of temperament" or "harmonious family life," may need to be protected to serve not only the interests of the licensee but also the children under care. The applicant or licensee needs to be informed as to what is protected and what is not.

The confidentiality provision should be stated so as not to preclude proper gathering and reporting of research data. Such data gives the State an overview of approved facilities of child care and a continuous inventory of resources.

21. *Annual report and other reports*

Requiring the licensing agency to submit an annual report of its activities and other reports of interest to the legislature and community emphasizes the responsibility of the licensing agency for its activities as defined under law. Such reporting is also an important means of interpreting child care licensing to the community.

22. *Penalties*

Criminal law penalties, in order to be invoked, must be provided for in the statute, since the power to declare the penalty for violation of the licensing law is vested in the legislature and cannot be delegated to the licensing authority. The sanctions which may be imposed should be specified. Perhaps the soundest approach to such sanctions would be to consider a violation to be a misdemeanor.

23. *Injunction*

Authorization for the licensing agency to seek an injunction to enjoin violations of the licensing act enables the agency to bring about immediate compliance with requirements when an activity or condition of a facility is likely to result in serious harm to the children under care.

The injunction can bring about the immediate enforcement of the licensing requirements while preserving the individual's right to due process. (Injunctions might also be used by licensees to prevent hasty and improper enforcement of the law, e.g., revocation of a license without establishment of sufficient cause.)

24. *Declaratory order*

Declaratory orders cannot be made without statutory authorization. Through issuance of declaratory orders, a licensing agency can provide official judgments on whether or not aspects of a proposed plan for a facility are within the licensing law. In the development of a large-scale child care operation involving considerable sums of money, it may be important to the sponsors to remove uncertainty as to the acceptability of particular approaches long before the facility is ready to be considered by the welfare department for licensing.

The declaratory order should be binding on the licensing agency. Since the order is binding, the licensee should have the opportunity to appeal if the licensing authority fails to stand by it.

25. *Judicial review*

The licensing law is strengthened and applicants and licensees are protected against the unreasonable exercise of power by the licensing agency when there is opportunity to appeal a decision, after a hearing, to the courts. But if the review involves undue substitution of judicial for administrative judgment on problems within the special competence of the agency, judicial review may impair the operation of an administrative program.[5] Therefore, if there are no constitutional provisions to the contrary, the court inquiry should concern itself with whether or not the agency could reasonably have arrived at the decision on the basis of the record, or was acting within the authority delegated to it.

26. *Relationship to other State public agencies*

The relationship of the State department of public welfare to other State agencies also carrying some responsibility for licensing should be stipulated in the statute.

If the State has an administrative procedures agency, there should be a statement on the nature of the relationship with that agency in regard to the promulgation of standards as well as the use of the licensing authority. Also the law should specify how other State officials such as the public health officer or the fire marshal shall be expected to participate officially in the child care licensing responsibility and the formulation of standards. It may also be desirable to include in this provision the basis upon which these officially cooperating State agencies shall be paid or funded for their participation.

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[5] See Davis, Kenneth Culp: ADMINISTRATIVE LAW. St. Paul, Minn.: West Publishing Co., 1959, p. 579.

Special features of a child care licensing law

In formulating a child care licensing statute, besides the features listed above which are common to all types of welfare licensing laws, there are considerations that are specific for child care licensing. Eight of these are commented on briefly below, the first four being of larger importance than the others:

1. *Formulation of desirable standards or goals of child care*

While licensing laws generally do not authorize formulation by the licensing agency of what may be termed goals or desirable standards of care, such a provision may be justified in a child care licensing law. Although the idea of goal standards is somewhat controversial and needs further discussion and legal research, it does suggest a possible legal base for providing consultation services in a responsible manner. At the present time much consultation is given without benefit of a structure of public policy. The formulation of desirable standards would provide definite goals against which each facility could compare its goals. Such standards, properly interpreted, are educational and provide incentives not only to facilities but to the community generally.

2. *Approval of articles of incorporation*

The goal of protection for children in out-of-home care, under both nonprofit and profitmaking auspices, is advanced by a statutory requirement that the licensing authority study and approve a facility for child care as a prerequisite to its incorporation. States with experience in making such pre-incorporation studies report that some poor facilities are prevented from opening up or continuing and that promising facilities are given consultation early, to their advantage and the ultimate advantage of the children in their care.

3. *Removal of children from facilities*

There should be statutory provision for the welfare department to initiate action to remove children from a facility when it has evidence of their abuse or mistreatment, regardless of the status of any action for violation of licensing provisions. The department should also be empowered to set up a plan of care for any child removed, using its own or other resources.

4. *Citizen action*

Through a provision whereby citizens may take steps to require the administering agency to discharge licensing responsibilities, the

statute can help ensure that the agency will carry out its licensing function.

5. *Providing counseling service to child care users*

Inasmuch as the State department of public welfare generally provides a complex of social services for children, including child placement, it might not seem necessary for the licensing statute to specify that the department provide for counseling to would-be users of facilities. However, for the sake of the many children who are placed independently of any public or private placing agency, it is desirable that the licensing agency be empowered to provide such counseling.

6. *Displaying child care license*

A statutory provision requiring that the licensee display the license at the facility would be in keeping with many other fields of licensing. Such a requirement should encourage constant awareness of the meaning of the license in relation to the daily activity of the facility.

7. *No advertising without license*

Some additional protection against unauthorized facilities may be provided by a statutory stipulation to the effect that persons or associations that wish to provide child care cannot use newspapers or other advertising media unless licensed.

8. *Solicitation of funds for child care*

It would seem to be sound public policy to restrict solicitation of funds for child care activities to licensed persons or organizations or to those whose child care plan has been given temporary approval. This preliminary approval does not guarantee later licensing.

The restriction should help to reduce irresponsible development of child care within the State and to prevent "charity racketeering." This requirement would be quite apart from local regulations which may cover charity solicitations.

Main criteria for evaluating the statute

The law will be effective to the degree that it states clearly what is intended by the legislation, who is to be licensed, and what authority for administration of the licensing function is being delegated.

It should contain no loopholes or ambiguities which will make it possible for the administrative agency to extend protection to one individual and not to another without being able to explain the selection on the basis of the law's directive. It should be definite enough

for effective administration and stringent enough to permit the closing of facilities which do not meet licensing requirements. It should give a series of clear and unmistakable directives to the administrative agency. It should be written simply enough so that a person of normal intelligence can tell whether he requires a license.

While the statute must be clear in setting boundaries, it should not state how its directives will be carried out. Flexibility should be allowed in operating procedures so that changing needs can be met and, when new, more effective methods are found, they can be incorporated.

The law should be consistent with other licensing laws of the State so that the public will not be confused as to what is expected under administrative regulations. Such consistency will also reduce obstacles for the agency in coordinating its work with that of other jurisdictions.

III. THE FORMULATION OF LICENSING STANDARDS[1]

Today we recognize that a primary goal of law, as of medicine, is the prevention of difficulties rather than cure after the event, and that administrative action is potentially capable of achieving this goal.

WALTER GELLHORN

MOST LICENSING STATUTES provide general guides (sometimes referred to as legislative standards), but the specific rules and regulations under which the licensing responsibility is to be carried are developed by the administrative agency, that is, the department of public welfare. These administrative standards establish the requirements which must be met before a license will be issued. For purposes of consistency and clarity, in this Statement the phrase "licensing standards" will denote only standards or requirements which the facility must meet in order to be licensed.

Eight main aspects of licensing standards will be considered here: (1) their functional value, (2) the legal basis of standards formulation, (3) the process of formulating standards, (4) parties to the formulation, (5) structure and function of an advisory committee, (6) basis of participation in formulating standards, (7) time of participation, and (8) adoption and promulgation of the standards.

Functional value of licensing standards

By setting standards the State endeavors to legitimatize patterns of care for children in facilities. These legitimatized patterns of care are deemed to be protective and conducive to the physical, mental, and social well-being of the child—they reduce risks in out-of-home care.

There is another important functional value of licensing standards—they provide an objective basis for achieving the constitutional principle of equal treatment before the law. When properly formulated and implemented, they protect the rights of would-be

[1] A major source is a dissertation by Harold Jambor, "Licensed Child Care Agencies Participating in the Formulation of Standards" (School of Social Work, University of Southern California, 1965). Some of Jambor's material appeared in an article in CHILD WELFARE titled "Theory and Practice in Agency Participation in the Formulation of Licensing Standards" (December 1964).

licensees to know what is expected and to be fairly and equally dealt with in their requests for permission to operate.

Another value of the licensing standards is their use in interpretation. Licensing generates within the community a social system comprising at least four parts: (1) the licensee or applicant; (2) official cooperators in the licensing process, such as the health officer or the fire marshal; (3) users of the service; and (4) community participants who have intermittent contact with licensing, e.g., a request for a reference statement, the making of a complaint, or serving on an ad hoc group for formulating standards. (See chart.)

If these groups are to work together effectively, they must have the same basic orientation to the licensing program. The standards should constitute the core of such an orientation. Using the standards, staff members can give comparable information to all groups, and provide them with a common nomenclature and set of concepts. Communication within the system can thus be greatly facilitated.

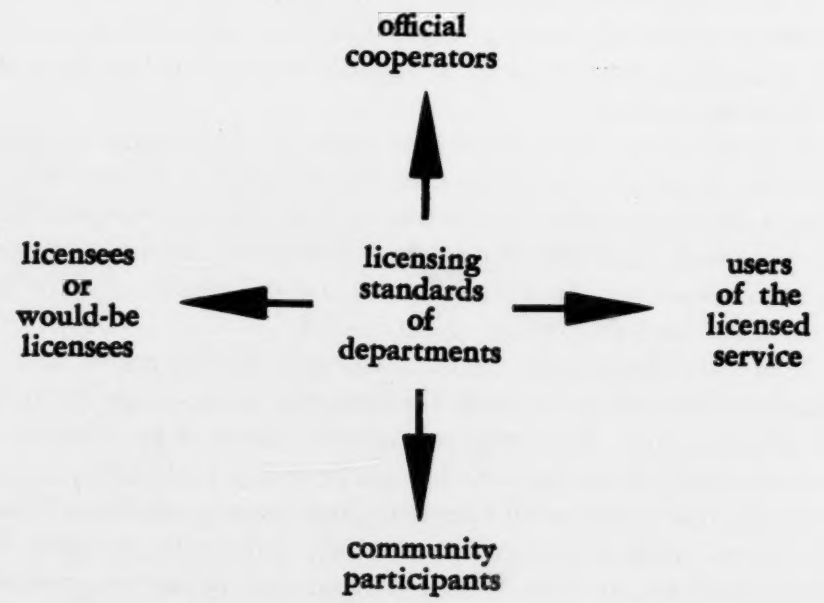
In summary, licensing standards first of all give directions as to the care which should be provided to children away from home. They also serve the cause of fair and equal treatment to persons who would carry this responsibility. Finally, they should facilitate interpretation which, in turn, should help the community to achieve the goal of protection to children cared for away from home.

Legal basis of standards formulation

As a foundation for the formulation of good licensing standards, the licensing statute should contain certain provisions relative to standards and their formulation, including clear directives as to the phases of the process. First, the statute should, as already indicated, contain a mandate to the State department of welfare to formulate standards. This mandate should be specific in respect to the nature and limits of the authority delegated. The statute should also contain guides as to the areas in which standards are to be formulated.

Last, the statute must give direction as to the methods by which standards are to be developed. This direction should indicate not only the participants but how and when they participate. Today child care licensing statutes include increasing numbers of directions as to participation, but there is still a marked lack of specificity as to who does what, when, and on what basis. The directions should be sufficiently specific to establish responsible role performance. For example, the provision regarding an advisory group should indicate the point of participation and extent of its authority.

LICENSING AS A SOCIAL SYSTEM



Process of formulating standards

Standards formulation should never be the exclusive task of licensing personnel or department administration. It is important to establish a working group with knowledge and expertise to advise the licensing agency in the formulation of standards. Its composition, as stated in the preceding chapter, should include a representation both of parents of the children in care and those who provide the care as well as representation from appropriate disciplines, official bodies, and citizen groups interested in and concerned about children and their families.

The standards formulation process might be viewed as having three major phases: (1) exploration, (2) deliberation, and (3) crystallization.

The exploratory phase should be largely but not exclusively the responsibility of the welfare department, specifically the child welfare staff. A possible explanation of why licensing standards in the past have not been systematically kept up to date may be the overuse or the too early use of advisory groups. The time and energy consumed were so great that once a set of standards was set up the task could not be faced again soon.

If an advisory group is present from the beginning, statutorily provided for or administratively created, it is assumed that there will be planned and purposeful interaction between the licensing authority and the chairman and possibly other members of the advisory group so that their views may be included in the overall design and direction to be taken in the formulation of standards.

There are three main tasks in the exploration phase. The first is research to determine the need for new standards or the reformulation of existing ones. This research should utilize departmental staff reports, especially those from child care licensing and child placement workers, and interviews with operators and parents of the children in care. A second task is comparative study, especially of other State licensing programs, in order to benefit from their collective experience. A third task is the examination of the contributions of national standard-setting organizations, such as the Child Welfare League of America and, in the case of day care, coordination with the requirements of the Department of Health, Education, and Welfare, Office of Economic Opportunity and the Department of Labor in consequence of the 1967 amendment to the Economic Opportunity Act which mandates common requirements and standards for all Federally funded day care services. The applicability of the nationally formulated standards to local problems and conditions should be discussed at staff meetings and with the advisory group. Also throughout this exploratory period there should be interaction with governmental cooperators

such as the State superintendent of public instruction, fire marshal, and public health officer to assure that their potential contribution in the formulation of standards is exploited early. Once these preliminary tasks are completed, the stage is set for the staff and the advisory committee to start formal planning.

The second phase, deliberation, should be characterized by free, open discussion of specific problems in protection and of proposals for ways of meeting these problems via specific standards. Any interested person should be allowed to participate. These open discussions should also be conducted by the department, although advisory committee members might attend and participate. From a public relations point of view there might be value in having the chairman of the advisory group chair the sessions. But the department must assume basic responsibility for bringing about a full discussion of the problems of out-of-home care and the ways of answering these problems. It is most important that this discussion take place before there is community "ego investment" in a particular set of answers.

In the third phase of the process, crystallization, the advisory group should be more active and responsible for operations. Every effort should be made to give wide notice of an advisory group meeting on proposed standards. Besides affected parties, provision should be made especially to hear persons who are actual or potential users of the service or who represent community interest in child care generally. After the hearings, the advisory group and departmental staff can devise a final formulation of the proposed standards. The responsibilities of the advisory group and the department will vary according to statute, tradition and personalities. Unless there is a statutory stipulation to the contrary, putting the proposed standards into final form should be the responsibility of the department staff, with advisory group ratification. When the advisory group has voted approval, the standards can then be submitted to the public welfare executive or board for adoption and promulgation.

Parties to the formulation of licensing standards

The formulation of licensing standards is a kind of administrative rulemaking. The rules have the force of law. Unlike the legislature, however, the administrative agency is not an elected body that represents the popular will. Rather, it is delegated authority for fact-finding, investigating, and making discretionary choices within a defined field of activity. The agency must assume responsibility for seeing that these choices are consistent with, or not in conflict with, the popular will. The licensing agency in formulating standards must also make sure there is a reconciliation, a compatibility, between the popular will and the views of those affected by the regulation.

Some legislatures, in order to ensure that the standards will represent a balanced viewpoint, have incorporated into the law a proviso to the effect that the standards should be formulated in cooperation with other departments, such as health, education and safety, and/or voluntary child care agencies and proprietary child care operators subject to license. In other instances, the law provides for the participation of a widely representative advisory group. An examination of these provisos indicates that insufficient thought has been given to who should participate or be represented in standards formulation. From the point of view of democratic, representative government at least five groups might well be asked to participate.

Departmental staff, especially front line licensing staff and other child welfare staff carrying facility-finding and placement responsibility, should be regarded as primary participants. The front line staff are in the most strategic position to realistically appraise how present standards are working and to report unmet needs for care and protection. In the past their participation has often been only nominal. Only a few States have a working system by which the staff conveys its observations of how specific standards work or what new standards are needed. In most States not even a log book of complaints is kept in order to help determine possible areas of need for protection. Yet only where there is searching analysis of existing standards, based on staff experience, can it be validly said that the standards formulation is developmental in nature.

A second group of participants are the various child care professionals or experts. They may be part of a voluntary agency staff, possibly subject to licensing themselves. They may be nonagency persons engaged in private practice or retired. They may be members of the staff of national or Federal agencies concerned with standard-setting or refinement of practices.

The contribution of these experts is greatly needed, but it is important that their contribution not come too late, when thinking has already begun to jell. Their late introduction may lead to poor public relations, to say nothing of the waste of forgoing the benefit of their contribution in early discussions. It is also important that the professional or expert should act as a consultant, not a final determiner of the standards to be adopted. To use a maxim of public administration, the expert should be "on tap, not on top."

The third group of participants to be included are affected persons—the licensees. Reconciliation of the welfare needs of those to be protected and the interests of the group subject to regulation is the crux of successful standards formulation. Balancing the varied and conflicting viewpoints of those affected by licensing standards is also essential to sound administration. Certain standards may appear to be confiscatory to certain proprietary licensees, while others might feel

that failure to impose these same standards subjects them to unfair competition. Likewise, establishing standards for certain philanthropic or nonprofit agencies may be seriously challenged. The standards may be seen as interference with their freedom as citizens to get together and do something for themselves or for those about whose needs they are concerned. It is essential that such resistance to licensing standards be reduced through the licensees' participation in the formulation process rather than allowing it to persist and later manifest itself in the form of attack in the courts.

A fourth group of participants should be the users of the service—the children and the adults responsible for their care. Generally current practice in standards formulation provides for hardly any involvement of this group. Members of this group are sometimes appointed to be among the community representatives on an advisory board. Their views may be indirectly expressed by departmental staff reports of their complaints. However, if both positive and negative reactions are to be secured firsthand, it would probably be done best through departmental sampling and research, and systematically notifying and encouraging users to attend and express their views at hearings on standards formulation.

The fifth important group consists of official cooperators, such as the health and safety departments, attorney general's office, and the administrative procedures agency, if such exists.[2] By participating in standards formulation, these cooperators not only contribute their expertise but also gain a better undertanding of their own responsibilities in the licensing program and may be able to clarify these responsibilities for the benefit of other participants. As with the child care experts, however, neither their expertness nor their legal authority justifies their controlling discussion of proposed standards so that nonprofessional participants are unable to identify with or support the conclusions. As Leiserson has said,

> . . . Expertness as a technique has no independent value in democratic terms. Democratic processes require popular participation and faith in the process of determining whether the expert view is then good. Too often the expert seems to conflict with the public.[3]

Beyond these five categories of participants it is assumed that all citizens interested in child welfare generally or child care problems specifically will be encouraged to participate in standards formulation

[2] In some States a member of the legislature is included on the advisory committee for the formulation of standards. This may work out satisfactorily in some instances, but there is reason to question the practice generally: the legislature, in passing the licensing law, is supposed to have delegated the task of formulating standards to an administrative agency.

[3] Leiserson, Avery: ADMINISTRATIVE REGULATION. Chicago: University of Chicago Press, 1942, p. 276.

at the time and in the manner that most effectively exploits their potential contribution.

Structure and function of the advisory committee

There is increasing use of advisory groups in developing child care licensing standards. Ideally, some provision should be made for advisory groups in the licensing law. Preferably members should be appointed by the chief administrative officer of the State welfare department, or the chairman of the policymaking board, if such exists.

There is disagreement within the field of child welfare as to whether the advisory group should be permanent, or dissolved after a set of standards is formulated. In the absence of a statutory provision to the contrary, a State's advisory group is likely to be temporary. Such a policy has the important advantage of flexibility; the representativeness and effectiveness of the committee are apt to be of a higher level.

The size of advisory groups varies greatly, depending in part upon whether the group is limited or open. A limited advisory group is one composed exclusively or mainly of persons with a given interest, such as the licensees in a category of care. An open group tends toward broad community representation. While there is lack of agreement on how open or limited membership should be, it seems important that the advisory group be representative of parties interested in the formulation of good child care standards.[4]

Whether open or limited, the problem of proper size remains. In a large group deliberation tends to disappear. A group that is too small may not only bring charges of not being representative, but also it may move toward being administrative rather than purely advisory. Possibly the optimum size is between 10 and 20. Within this limit orderly deliberation is possible, yet the number allows for a variety of viewpoints.

When the number of those wishing to participate exceeds what is feasible for a single advisory group, the interests of some of these people might be handled through ad hoc subcommittees appointed by the chairman of the advisory committee. These subcommittees, which may sometimes be regional groups, could take on specialized assignments from the parent advisory group. Usually subcommittee members are not members of the parent group. An exception would be subcommittee chairmen who are also on the parent advisory committee. While there are advantages in the subcommittee system, there may be prob-

[4] See Alexander, Chauncey A., and McCann, Charles: The Concept of Representativeness in Community Organization. SOCIAL WORK, January 1956 (published by School of Social Work, University of Southern California).

lems in integrating the work of the small groups into that of the parent group.

The extent of responsibility of a licensing standards advisory group is frequently unclear, regardless of whether the group is established by statutory stipulation or by administrative decision. Advisory groups that are statutorily created and whose membership is limited to affected parties, that is, licensees, seem to tend toward being administrative rather than advisory. There are instances where such groups have almost taken over the full authority and responsibility of formulating licensing standards, except their official issuance and promulgation. When this happens the role of the State department of welfare is mainly that of servicing the so-called advisory group—in effect, little more than that of a sideline observer.

Basis of participation in formulating standards

The fact that the State welfare department could become little more than a sideline observer raises the basic question of the respective responsibilities of departmental and nondepartmental participants in standards formulation. Although the use of advisory groups has increased greatly, there is still no well-worked-out theory as to the basis for participation.

Empiric analysis of the operations of State advisory groups would indicate at least three bases of participation: due process, partnership, and interest representation.

Participation based upon the legal concept of due process is associated with the right to know and be heard. This basis, while important, tends, from the viewpoint of a dynamic program of child care, to be restrictive and is of primary concern to licensees. In no way does it ensure broad community representation. In fact, when this basis of participation dominates, it may discourage participation.

Participation based upon a concept of partnership of government and private enterprise, while emotionally appealing, is legally hazy and offers little clear direction to the licensing agency. It may result in the licensing agency's escaping full responsibility and accountability in the protection of children receiving out-of-home care.

The principle of interest representation would seem to be the best basis of participation. This political theory, formulated by John Locke and broadly accepted in Anglo-American tradition, insists that in all legislative activity the legislating body should consult with and listen to anyone who is interested in any particular legislative proposal. This principle is relevant here because licensing standards do have the effect of laws.

The principle of interest representation is more dynamic than that of due process because it promotes a broader base of participation. Also it is more responsibly based legally than the partnership concept, which does not provide direction for the government to assume leadership in protective interventions. The interest representation concept directs the State public welfare department to consult prior to exercising its right of final decisionmaking. It gives interested parties freedom to speak as they may wish and gives the department freedom to use what is heard in the best interests of protecting children who are receiving out-of-home care.

Time of participation in the formulation process

The question of when advisory groups and other consultants should participate in standards formulation has been generally neglected. Statutory provisions relating to advisory groups tend to be silent as to the time of participation. This lack of explicitness may result in an assumption by the advisory group that their participation is constant throughout the formulation process.

To prevent such confusion a schedule of participation might be established. A possible model might be: the initial phase, exploration, is primarily a departmental responsibility. The second phase, deliberation, is a mixed responsibility of department and advisory group, plus extensive participation by interested individuals. The third phase, crystallization, is largely a responsibility of the advisory group. At this point, the goal is to secure and integrate various viewpoints. After the hearings, it is the department's responsibility to put the proposed standards into final form. The fourth phase, adoption and promulgation, must be done by the department unless there is a statute to the contrary. This last responsibility cannot be legally, and should not be administratively, a shared responsibility.

Adoption and promulgation of licensing standards

The development of licensing standards is completed at the point when the advisory committee and the staff, including the department's attorney, present the final draft of the proposed standards to the department director for adoption and promulgation.

Two steps, one administrative and one legal, are involved before the proposed licensing standards become law. One is the decision to accept them, made by the departmental director or board. The other step, promulgation, includes observance of whatever procedures State law prescribes with reference to a public hearing, adoption, registration, and publication. The purposes of the promulgation process are democratic.

IV. ADMINISTRATIVE ORGANIZATION[1]

The question of the authorities to be vested with licensing powers can be answered only by a survey of the entire problem of administrative organization.

ERNST FREUND

THIS CHAPTER is concerned with six topics: (1) the administrative location of the child care licensing responsibility in the State department of public welfare, (2) separation versus integration of multiple licensing responsibilities, (3) degree of specialization within whatever operating unit provides services to children, (4) the respective roles of State and local welfare departments in licensing, (5) intradepartmental and interdepartmental coordination of licensing functions and (6) the relationship of official cooperators with the State welfare department.

Administrative location in the welfare department

Child care licensing has generally been assigned to the State department of public welfare either exclusively or conjointly with one or more other departments. The designation of a single department would seem to be sound public administration. To have one rather than two or more licensing agencies may be expected to facilitate decision-making, reduce conflict of interest, and contribute to ease of operation for both the licensor and the licensee.

Some of the reasons for locating all child care licensing in welfare as the agency of choice are: (1) The public welfare agency is the department where the majority of direct child welfare services are located, organized within a system that brings together Federal, State and local authority and funding. This includes community planning and cooperative activity with voluntary children's agencies. (2) Child care licensing is functionally related to other direct public child welfare services, particularly foster care, day care, and maternity care. (3) Social protection or care is the common need of children in any out-of-home situation, regardless of the health, mental health, or other specialized need primarily responsible for the child's presence

[1] Partly derived from the teaching document by Class and Binder, "The Licensing Responsibility in Public Welfare" (see bibliography).

in the facility. (4) The public welfare department, having the most comprehensive functional and legal base for regulating child care, is in the best position to negotiate with other departments for professional and technical services.

Assigning the State department of public welfare the primary or overall licensing responsibility does not mean that other departments of State government cannot have a statutorily defined responsibility. The child care licensing act should spell out both the role and the relationship of cooperating departments, such as public health, mental health, education and safety.

Separation versus integration of multiple licensing responsibilities

In some State departments of public welfare, the licensing authority is severalfold. There may be licensing responsibilities in relation to several different kinds of child care, homes and institutions for care of the elderly, and even mental health care.

When a department has multiple licensing responsibilities, the basic question regarding administrative organization is: Should these several licensing responsibilities be brought together into a single licensing unit, or should they be separately assigned, to be administered along with the services for the group that the licensing is designed to protect? In the latter arrangement, the licensing of child care agencies, homes and institutions, and day care facilities would be assigned to the child welfare staff, and the licensing of facilities for the elderly would be assigned to staff providing services and assistance to the aged. At least in the larger State welfare departments, in the long run and from the viewpoint of professional social work objectives, such separation of various licensing responsibilities seems preferable. Greater efficiency and better service can be expected from the grouping together of "natural affiliates" of services. Certainly, the staff providing child welfare services, seeing the total needs of children who live away from their own homes, can bring a realistic approach to child care licensing.

Specialization within the division serving families and children

If licensing responsibilities are distributed among the various operating divisions, how specialized should the licensing activity become within a division? For example, should licensing be assigned to a section which does only licensing? This arrangement prevails in many State welfare departments, and given the limitations of manpower and the technical aspects of regulatory administration, it seems

to be an organizational must. To make sure such a specialized unit does not get isolated from other child welfare activity, internal communications must be in good order.

Respective roles of State and local governments

A fourth basic question in the administrative organization of welfare licensing is how much of the responsibility should be completely the State's and how much, if any, should be delegated to the local governments of counties, cities or towns.

At any given time and place the pattern will be determined by the licensing statute. Certainly the State agency should have final responsibility for the promulgation of licensing standards. The need for uniformity and fairness in enforcement would seem to require that this responsibility not be delegated.

The application and enforcement of standards would also seem to be best carried out by the State, acting directly. This view is predicated on the assumption that where the State acts directly in local communities, the way will have been prepared and the activities continuously supported by suitable community organization and public relations. Given this kind of preparation, licensing operations will usually be facilitated by the prestige of the State, the presence of a better equipped staff of specialized consultants and a more direct access to the State's attorney general. Moreover, complete decentralization would increase total overhead costs, and local programs may be less likely to receive adequate financial support. The relationship of the local agency with the State administrative procedures agency would also need to be worked out.

If a State's public welfare programs are generally administered by local governments under supervision by the State, however, child care licensing should probably be handled, at least in part, in the same way. If the licensing activity is to be shared, it seems most appropriate to delegate to local government the responsibility of licensing persons who give care in their own homes. In many instances, the local welfare department doing the licensing will be interested in using these homes for its clients. If so, it may be in the interest of good relationships that a second agency not intrude into the situation. Even if the local agency takes over this licensing activity, however, the State agency still has a responsibility to review and to hold the local agency to consistent enforcement of minimum standards.

Intradepartmental and interdepartmental coordination of licensing

When the State welfare department has multiple licensing responsibilities it would seem most important that there be an interdivisional committee on departmental licensing operations. All welfare licensing programs have many common features. An interdivisional committee should help each licensing section to benefit from the staff thinking and experience of the other licensing units.

When another public department has licensing responsibility in respect to some type of child care (usually it is of a specialized nature, such as foster care for crippled children or private institutions for mentally ill children), an interdepartmental committee on child care licensing would seem desirable. The purpose would be to prevent conflicting practices and to encourage the sharing of experiences and thinking between departments.

Possibly the most effective way to achieve integrated licensing service when more than one department is involved is for the welfare department to issue under statutory stipulation a "basic" child care license. Then, if other departments want specific standards met for their programs, they could supplement the basic licensing by requiring a special certificate or credential (to avoid confusion it should not be called a license), which they would issue.

Relationship with official cooperators

Numerous references have been made to the participation of other public officers or departments, both in the quasi-legislative function of formulating standards as well as in the quasi-judicial function of issuing or denying licenses. Where there is statutory reference to other public departments cooperating, it is very likely to be in respect to issuance of licenses rather than in standards formulation. Generally, there is no provision for creating an interdepartmental group to consider problems relating to standards, issuance of licenses, or "hardship cases"—cases in which insistence upon certain requirements may result in loss of otherwise good facilities. Nevertheless, it may be possible to establish such a group simply by administrative decision of the cooperating departments. Such a committee could also be the means for discussing and seeking solutions for any interdepartmental problems resulting from the authority of the various departments to formulate and enforce their own standards.

With the increasing magnitude of child care licensing programs, the problem of cost and budgeting for this service by cooperating departments will arise with increasing frequency. Study of this subject should include a cost analysis of the licensing operations of the respective cooperating agencies. Such data will help administration and agency staff work together realistically in handling the problem.

V. APPLICATION, STUDY, AND LICENSE ISSUANCE[1]

Authority is based upon the willingness of members to accept it . . .

CHESTER A. BARNARD

THE LICENSING PROCESS naturally varies from one State department of welfare to another and from one category of licensing to another. Even within a given department or locale the process may vary with the individual worker and the period of time. Many factors contribute to this variability: the adminstrative organization and financial support in the State, the content of the licensing law, the licensing standards, and the community's familiarity with and support of the program. In spite of the variation that will enter into any operating program, the general principles that underlie the process can be discerned.

The licensing process might be broken down into four phases: application-taking, facility study, license issuance or denial, and supervision-consultation. The first three phases are discussed in this chapter.

Application-taking

Administrative structure

In taking applications, three aspects of administrative structure are important: (1) the method of handling inquiries, (2) personnel assignment and (3) the locale of the application-taking interview.

Handling of inquiries. An inquiry is not an application, but it may lead to an application. Thus, how a department deals with inquiries regarding child care in general, or child care licensing specifically, is of considerable importance to the administration of application-taking. Regardless of the form of contact—telephone call, letter, or office visit—basic statistics on inquiries should be kept for sound operational planning.

The handling of licensing inquiries needs to be separated from facility-finding, although these two activities may be interrelated. In particular, States which license the foster homes and day care homes

[1] For a further discussion of the licensing process, including supervision and consultation, see Costin, Lela B., and Gruener, Jennette R.: LICENSING OF FAMILY HOMES IN CHILD WELFARE: A GUIDE FOR INSTRUCTORS AND TRAINEES. Detroit: Wayne State University Press, 1965.

of the public and private child-placing agencies should make clear to the inquirers that certain procedures apply to licensure while others apply to the relationship between the agency and its contractually related facility. If inquirers request additional information related to use of a home as an agency resource, they should be given the information, but it should be differentiated from licensing information.

A person inquiring about licensure is entitled to succinct, clear statements as to the need for a license and the procedures for obtaining one. To ask questions of inquirers concerning their social history in order to rule out unqualified persons is a questionable practice, because refusal to issue a license must be based on a present disqualification. To reject an applicant on a social history item requires that the characteristic or feature continue into the present. Such a determination should be made through investigation after the application is in. When this type of questioning is validly based on a saving of the would-be applicant's time and energy, the basis and import of the questioning should be made clear to the inquirer. The applicant's entitlement to apply for a license, regardless of a preliminary "guess" that he is not qualified, should be explained. While preapplication counseling is a most important service, licensing staffs sometimes fail to make clear the distinction between suggesting the likelihood of disqualification and handing down an authoritative "no" to applying.

Personnel administration. Sometimes application-taking is done by specialized staff, in other instances by the same worker who carries on in later operations, such as the facility study. Both types of staff are used for application-taking by some agencies, especially for certain categories of licensing, such as boarding home care. The decision of whether to have specialized staff may depend largely on the size of the program and numbers of applicants.

From a model-building approach, a good case might be made for specialized staff. Besides advantages in manpower and training aspects, a specialized approach contributes to sound regulatory administration. Having the same person explain requirements and entitlements to everyone seeking a license should facilitate uniform administration. Another potential value is the availability of a second evaluator of the applicant, especially of his personality characteristics. Although the appraisal might or might not be useful for denial of a license application on "personality" grounds, it could serve as a reinforcing factor for decisionmaking.

The locale. For a model licensing operation, it might be proposed that all application-taking interviews should be performed at the departmental office rather than at the facility. This is in keeping with the legal principle that the applicant seeks the license. The requirement also works to the advantage of the applicant in that it constitutes evidence of his intent to apply.

The office interview emphasizes the official nature of the relationship. It also provides a better setting for the licensing worker and the would-be licensee to come to grips with the basic matters of requirement and entitlement. Details of the situation at hand are less likely to intrude. Also, any confusion stemming from the host-and-applicant and guest-and-inspector roles is avoided. This is especially important in relation to family-type facilities. In the office, the function of the worker who will later conduct the study can be explained and role expectations can be established in advance of actual study operations.

Coming in for an office interview should be required generally in application-taking, but it will be necessary to make some exceptions. The department should work out criteria for identification of hardship cases so that there will be consistency in the granting of exceptions. There should also be a plan of operation that assures prompt handling of these exceptions.

The application-taking interview may be divided into five steps: (1) hearing the applicant's proposal, (2) translating the proposal into a concrete plan, (3) explaining standards, (4) interpreting coming phases of the licensing process, and (5) coordination of the study with local requirements under municipal or other authority.

1. **Hearing the applicant's proposal.** The would-be licensee should be given an opportunity to fully present his plan for child care, free of distracting or controlling questions from the worker. Because of the quasi-adjudicative aspects of licensing, it might be said that the application constitutes a first hearing on the request for permission to operate a facility. Permitting the applicant to present his proposal fully and freely also provides valuable cues that help the application-taking worker translate the proposal into a more specific plan.

2. **Translating the proposal into a concrete plan.** The second step is to move the applicant from the initial and possibly ideal formulation to a more concrete proposal so that the licensing requirements can be discussed more specifically.

3. **Explaining licensing standards.** The third step would include explaining the meaning of the term "licensing standard" or "requirement," the nature of child care standards generally, and the standards in effect in the State. The aim is to provide the applicant with a basic concept of standards as qualifications which must be met. For this purpose, a selection of standards should be made for the particular applicant; the total body of standards would be overwhelming, and some standards would not be relevant for his situation. The cues from the initial presentation of the proposal can help guide the selection.

4. **Interpretation of other phases of the licensing process.** The applicant should be told about the general nature of the facility study and other phases of the program, including the supervision that fol-

lows issuance of a license. To let a person enter the licensing process not fully aware of all subsequent requirements may be likened to engaging someone in a contract without telling him about important restrictive details. The applicant should also be informed at this time of the possibility of consultation being available to him after licensing, if he wants it.

5. **Coordination with local requirements.** The applicant should be told when there are local requirements under city ordinances or other authority which he must meet. He should be directed to the appropriate offices early in the inquiry or application-making phase, in order to understand from the beginning all the requirements which he must meet, their cost, and whether his proposal is feasible.

The study

The goal in studying a facility is the determination of facts and feelings upon which to base a recommendation for issuance or denial of a license. This activity has various labels besides "study," such as "investigation," "inspection," "evaluation" or "report." It would seem preferable for the agency to use the term that appears in the statute.

First, the worker might give the applicant a brief explanation of the nature of the study upon arrival at the facility. The applicant should be told what specifically is to be examined and when and how it is to be examined. In this way a future misunderstanding as to whether or not a fair study was conducted may be prevented.

The applicant, as well as the licensing worker, should be very aware from the start of what might be called the "burden of proof" aspect of license-getting. It should be assumed that legally, except where the statute is to the contrary, the burden of proof is on the applicant.

In regard to the actual conduct of the study, the following points might be kept in mind:

1. Clustering related standards into natural groupings helps expedite the study process and facilitates interpretation.

2. Coordination of the department's study with the study being made by cooperating departments (health, fire and building safety, zoning), State and local, helps the licensing worker and the applicant to understand the full extent of the requirements and to make considered judgments as to their feasibility for the applicant in view of the extent of costs, etc.

3. The applicant should participate as fully as possible. As he participates actively in the application of standards to his own situation, the meaning of the standards will become more real to him.

4. The applicant should be told about deficiencies in meeting requirements and areas of questionable or marginal conformity. In many instances, it will probably be a good idea to deal with the deficiencies in detail toward the end of the study, when their relative significance can be fully appraised in the light of total findings. The important thing is that the applicant not be misled into believing that everything seems to be completely acceptable only to be told otherwise after the study is over.

5. When the study comes to the intangible standards—the attitudinal, interpersonal, and interactional aspects—it becomes, by necessity, less objective and more subjective. It is necessary that licensing worker and applicant reach a common understanding of what children require for their social, cognitive and emotional nurture in relation to their age, previous experience, or stage of development. Only then can there be an assessment of conformity with standards of an intangible nature. The full cooperation of the applicant is needed, including his version and interpretation of the suitability of the care and guidance which the children receive.

In a court review of the denial or revocation of a license, it may not be enough for the licensing worker to have examined the facility and program without the operator's participation and then decided that a day care program, for example, is not acceptable. The licensing agency should be able to establish that the appraisal was conducted with the active participation of the applicant and that the applicant had agreed that the way in which the appraisal was done was fair. When there is such applicant cooperation in the study, any controversy over its fairness is more likely to be based on the important issue—the fairness of the standards themselves. Judicial review may then truly represent the degree of community acceptance of licensing standards. What the court decision really says is: this is how far the community will support this requirement for protecting children receiving out-of-home care. In passing, it should be noted that while failure to meet intangible standards may be difficult to prove, this factor should not deter licensing agencies from making such an appraisal.

6. Standards which relate to groups, such as wholesomeness of family life in a foster home, should be applied by observing interaction. Workers should not be asked to judge what they have not actually observed, and a group is not reliably observed by talking with members separately.

Actually, the psychological aspects of a child care facility cannot be fully and finally appraised until children are placed there. Full recognition of this fact may eventually result in two-step licensing: (1) first, provisional approval of structure and general plan of operation; (2) second, full licensing after appraisal of the actual child care operation.

7. Reference-checking has several values for child care licensing: (1) it provides a "lay" check on the licensing worker's judgment; (2) it is a means by which the immediate community participates in protecting children in out-of-home situations; (3) it is the chief means for assessing the quality of a facility's community relations; (4) by having the applicant closely consider his connections with the community, it contributes to an increased sense of the responsibility involved in applying for a license and providing care; (5) it is another opportunity to interpret licensing to the community generally, especially if the persons named as references are visited rather than contacted only by mail.

In bringing the study to a close, consideration should be given to some or all of these five matters:

1. There should be a general review of the study findings so that the applicant knows which requirement he meets, which he meets marginally, and which he fails to meet. If there are deficiencies as to standards conformity not dealt with fully earlier, the applicant must be confronted with them now. The applicant should be told of the degree of deviance from the standard and be given some indication as to how the deficiency might be overcome.

2. The possible nature of the conditions of the license, i.e., the specific terms, needs full consideration. Again, the rights of the applicant in respect to the conditioning should be presented.

3. Any further details regarding issuance procedure, posting of the license, the duration of the license and the method of renewal should also be imparted at this time.

4. Assuming issuance of a license, how licensing supervision is carried out and how consultation might be helpful to this particular licensee should be described in detail.

5. If the applicant is to operate the facility in conjunction with a placement agency, this should be noted. The information may be useful from the viewpoint of both placement operations and the agency's concern with total child welfare needs. However, this concern, as already indicated, does not warrant mixing licensing appraisal of the facility with active facility-finding.

Issuance or denial of a license

Following the completion of the study, an applicant is entitled to a prompt decision as to whether or not a license will be issued. Hopefully, delaying tactics will not be employed as a way of dealing with marginal or unqualified but very insistent applicants. These tactics seldom win out against the very aggressive but questionable applicant and they tend to actually weaken support for the department

if the case is taken into court. Welfare departments sometimes use such tactics because their power to protect children in this type of situation is inadequate or uncertain. Departmental time and energy is then spent in running battles with individual applicants rather than in a program that effectively handles all marginal applicants.

Departmental roles

To achieve prompt decisionmaking, the roles of the licensing study worker and the supervisor in the licensing section need to be well defined. From a regulatory point of view, it would seem sound to start with the principle that "the person who sees should recommend." Thus the licensing worker who conducted the study should be responsible for putting in writing a recommendation that the license be issued or not, with the supporting reasons. The statement should include the conditions or terms of the license and reasons for these conditions. This is especially necessary when the conditions differ from those requested in the application. The recommendation should bear the worker's signature; it should not be a joint statement with the supervisor or higher echelon staff member.

The recommendation of the child care licensing worker should be supported by the licensing record. This record should include the completed application, a narrative statement of the study findings, work sheets or forms, documents from any other agency whose approval is necessary, required references, and other documents collected by the licensing worker or submitted by the applicant. Any contact with the applicant prior to the filing of the application should be noted somewhere in the record.

The role of the supervisor is that of stating, separately, whether or not he concurs with the worker's statement, on the basis of conferences with the worker during the study and examination of the licensing study record and documents. If he does not concur, the reasons for his position should be given.

The worker's recommendation, the supervisor's statement, and the licensing study record would then be submitted to the departmental person with final responsibility for issuing the license. When there is a difference of opinion between worker and supervisor, the person with administrative responsibility for issuing the license must resolve the difficulty. The content of such a decision should be reduced to writing and become part of the licensing record.

A departmental group for systematically reviewing exceptional and controversial cases should contribute to promptness and to smooth resolution of internal conflict over whether or not to grant a license. Such a reviewing group could also meet with officials from other departments when there is a difference of opinion between departments on approving or not approving a given facility.

Letter of transmittal

The transmittal of the license in many departments is routine, but some use the letter as a means of effective teaching about child care licensing and of building department-licensee relations. It would seem desirable for a department to work up a model letter of transmittal that is readily adaptable to each issuance situation. This letter should include certain items:

1. After stating that a given type of child care license is being issued as of a given date, there might be reference to the statute upon which the license is based, if this is not printed on the license itself.

2. The conditions of the license should be stated or repeated exactly as stipulated in the license.

3. Significant improvements that the licensee is undertaking should be given recognition.

4. A statement should be made to the effect that a violation of the conditions of the license as well as failure to conform to the standards or the statutory provisions places the license in jeopardy.

5. Any contingencies or provisional features in the issuance or the conditions of the license should be enumerated and discussed and time limits set.

6. The expiration date of the license and the method of renewal should be indicated. Attention should also be called to reissuance requirements in case of change of location or of other relevant circumstances of a license.

7. An interpretation should be given of the licensing supervision that will be carried out.

8. Whatever the department is prepared to do in the way of consultation should be mentioned. Ideally, the department should have a separate, brief statement on the activities and goals in both supervision and consultation. This statement could be referred to in the letter of transmittal or included in the letter.

9. The letter might close by making reference to any ceremony in connection with license issuance, such as a monthly or quarterly open house for new licensees at the department's office, or a neighborhood gathering of licensees to introduce new licensees to the community, or by noting that the licensee may expect to see his name in the departmental newsletter which goes to all licensees.

VI. SUPERVISION–CONSULTATION[1]

The supervising power is the power to achieve regulatory objectives without formal action. It is a concomitant of, an outgrowth from, and a substitute for the prosecuting power . . .

KENNETH CULP DAVIS

THE FINAL PHASE of the licensing process, supervision-consultation, takes place after a license has been issued. It is concerned with maintaining standards which were met when the license was issued, and with compliance with the conditions of the license. In addition, most licensing agencies attempt to upgrade care beyond the minimum requirements for the license. The supervision-consultation phase is dealt with here under three headings: differentiation of supervision and consultation, basic elements of supervision, and types of supervisory visits. Two related topics, handling of license renewal and enforcement activity, are also discussed in this chapter.

Differentiation of supervision and consultation

The State in issuing a child care license gives permission to a person or group to engage in an activity which is otherwise prohibited. The "price" each licensee pays for this permission includes being subject to supervision. "Supervision" here means official observation by the department issuing the license to see that conformity to licensing standards continues and that there is compliance with conditions of the license. The right of supervision exists throughout the period of the license. This right, expressed as the right of investigation, inspection, inquiry or visitation, is provided for in nearly all State child care licensing laws.

When the activity moves from determining conformity to minimum standards to helping the facility to come closer to ideal goals of child care, it is more properly referred to as consultation. The worker in many situations may move back and forth between the two activities, but he should be well aware of which is which.

In giving consultation, the worker will draw upon his knowledge of child care and that of his colleagues. He may also encourage the licensee to obtain information and guidance from various other sources, including professional organizations, colleges and universi-

[1] For further discussion of this phase, see Costin, Lela B.: Supervision and Consultation in the Licensing of Family Homes. CHILD WELFARE, January 1967, Vol. 46, pp. 23-29.

ties, and other government agencies. Consultation to the licensee by staff in the health department, education department, or other agencies should be requested to handle questions in their special areas.

Explicit provision for consultation to a licensee is still not included in many child care licensing laws, although there are those who contend that it can be derived from the right of supervision plus general child care responsibilities legally assigned to the department. Some new or recently amended child care statutes contain specific provision for licensing consultation.

One very practical value of such a provision would be that it provides a basis for justifying the budgetary item for the activity. However, for the provision to become fully effective in the State, it may have to include authorization for the department to formulate maximum as well as minimum standards and to engage in the interpretation of both sets of standards. Legitimately formulated maximum standards would give specific departmental direction to consultative activity. It would encourage uniform operations and interpretations.

Much consultation service seems to be performed haphazardly: it lacks planning, followthrough, and systematic evaluation. Some consultation is performed outside of specific assignments; it is something the worker does without benefit of defined departmental policy. Consultative activity is frequently not taken into account in determining workloads.

In some ways the supervision-consultation activity is the most crucial of all the phases of the licensing process for protecting children in out-of-home situations. Under present circumstances, including judicial attitudes toward applying psychological standards to applicants, many questionable or only partially qualified applicants become licensed. Licensing supervision-consultation provides another opportunity to work with these marginal licensees.

The skills needed for the initial application and study phases of the licensing process are different from those needed for the supervision and consultation phase. In the early phases the facility generally is not yet engaged in child care, and the worker's task is to see that a plan of operation is set up that, in theory, should provide good care. In the supervision phase, the plan is tested with real children. Now the skills of analysis and application of knowledge are needed. These changing needs in worker skills may have implications for personnel administration and staff development.

Basic elements of supervision

The first task in supervision is observation or inspection. Skillful observation can be broken down into four elements: clear conception of standards, perceptual basis, particularization of focus, and grading or evaluation.

Clear conception of standards. The worker should go into the supervision of a facility with a clear concept of each of the licensing standards such as proper nutrition, sufficient income, adequate space, and suitable family life. Without knowing what he is looking for, he will not know whether or not he has found it, just as on December 25th a man from Mars would not see Christmas unless he had a concept of Christmas. Not only previous training but staff development programs must help licensing workers acquire well-developed concepts of the conditions they are looking for and hoping to foster.

Perceptual basis. Regulatory objectivity requires that the licensing worker be able to indicate the perceptual basis for a subjective reaction. It is not enough to say the food was bad; rather, it should be noted that a meal tasted bad, looked bad, or smelled bad.

Particularization of focus. Closely coupled with the need for a sound perceptual basis is the need to perceive the specific relevant details. A foster home may be generally bad but, from a regulatory point of view this judgment must be supported by specific information: poor location, not enough play space, substandard sewerage.

Grading or evaluating. Finally, a grade must be assigned: the facility conforms or does not conform to standards and in what respects.

If the worker finds continuing conformity to standards, this fact facilitates renewal and constitutes the basis for offering consultation. On the other hand, if observation leads to negative findings which may become the basis for revocation or nonrenewal, four steps need to be taken:

1. The licensee should be made well aware of what specifically is wrong.

2. The licensing worker has a responsibility to endeavor to teach what is right and how to correct what is wrong. Whenever possible the worker should offer alternative ways so that the licensee can meet the requirements in the way most suitable from his point of view.

3. When the finding is definitely unsatisfactory, the licensee should be formally notified of the specific deficiency and the need for overcoming it within a certain time. Implicitly, at least, the directive should convey the possibility of the license being in jeopardy. The directive should probably be given first orally in the interview with the licensee, then in a letter.

4. The findings of the official observation, both positive and negative, should be reported and recorded, so that both the licensee and the department staff can know what was observed and how it was evaluated.

Practices in reporting and recording vary greatly, perhaps partly because this activity is often mixed with reporting and recording for facility-finding and placement. The licensee is entitled to an oral or written report at the time of, or soon after, a supervisory visit, and departments should have a clear policy on this. Also, in order to record clearly whether or not a licensing worker during a supervisory visit officially observed conformity to particular standards, checklists might be used and made part of the licensing record. There will be times when the department will find it of value to know whether inspection of a given standard did or did not take place on a given date.

The narrative statement in the licensing record may be used to cover overall impressions and special aspects of the facility. Much content, ranging from notes on miscellaneous social history to records of placement and routine operation, which is now present in many licensing records, can and should be eliminated. Not only is it irrelevant from the viewpoint of licensability and therefore wasteful, but legally it is a questionable practice, possibly bordering on invasion of privacy of the licensee.

Types of supervisory visits

For administrative purposes, it is useful to differentiate the several types of supervisory visits: post-issuance, regular or periodic, and complaint.

The post-issuance visit may be used to reinforce the licensee's understanding of the standards of care, help set right any incorrect practices that the licensee has inadvertently instituted, and to set up a plan for supervision.

Following the post-issuance visit, the periodic visits are begun. The licensing law or administrative regulations may require a specific minimum number of such visits. No brief is made here for setting such a minimum, for it can also become the maximum. One advantage, however, of a set minimum number may be that it improves the possibility of sound funding of the operation. An increasing number of welfare departments have developed a systematic plan of visitation. As soon as it is evident that licensing requirements are met, a plan for consultative service can be developed.

Special visits must be made when a complaint is made regarding a licensed facility. There is some confusion about when an unfavorable comment is a complaint from a licensing point of view. While there can be overlapping between complaint-handling in protective services for

children and complaint-handling in child-care licensing, the two operations are different. The legal point of reference for the child neglect complaint may be criminal law, and for the licensing complaint it would be regulatory law.

If these various types of visits are made to foster homes and family day care homes used by child-placing agencies, public or private, they need to be clearly differentiated from placement supervision and consultation. It may be less confusing if the placement worker carries both placement and licensing supervision functions. This situation points up the inappropriateness of licensing the facilities used by a licensed child-placing agency or by the public welfare department.

License renewal

During the supervision-consultation period, a visit specifically for license renewal may be made.

There are few guidelines available on renewal of licenses, except as to when and how the licensee applies for renewal. Many licensing statutes are silent as to how the department should handle renewal. They seem to spell out more frequently the hearing or review procedures for nonrenewal.

A renewal may be treated somewhat like a new application, in which case a facility study, at least in a condensed form, would be done. Or the license may be renewed simply on the basis of performance. In this approach, renewals are granted routinely unless there are known instances of failure to conform to standards or to comply with conditions of the license. This second approach seems the generally preferable one. It would not, however, eliminate the need for periodic review or evaluation visits that would be part of supervision-consultation. Many States do not seem to follow either the new-application or the routine approach completely, but rather a mixture of the two.

Where a yearly renewal requirement is in effect, increasing the duration to 2, 3 or 5 years might be advantageous. Annual renewal may contribute to maintaining standards, but it drains off energy that might be used to achieve better care generally. Moreover, doing away with annual renewal should reduce "racing the calendar" and dealing too hastily with questionable situations before renewal time. Of course, there should be as much or hopefully more supervision-consultation service when the period of the license is extended. It should also be noted that there is no modification of the power to suspend or revoke the license.

Regardless of the procedure of renewal, there will be situations in which a renewal application should be denied. The nonrenewal situation is quite different from the denial of an original application.

Once a license has been issued, a vested interest may be present which requires a different approach. Generally speaking, at the time of applying, "the burden of proof" for qualifying is upon the applicant. In revoking a license the burden of proof tends to be on the licensing agency.[2]

Enforcement activity in relation to the licensing process

There is a tendency to think of enforcement activity as a part of licensing. Strictly speaking, enforcement is beyond the province of the licensing process. When an operator breaks the law by not applying for a license or by operating after he has been denied a license or had his license revoked or not renewed, the departmental task is no longer one of determining whether or not permission should be given to operate. Rather, the problem that is before the department is simply how to deal with an illegal operation, i.e., how to prohibit the person from engaging in child care activity with or without the application of sanctions as provided in the licensing statute. Thus, while enforcement is not a part of the licensing process, there is a relationship in that enforcement activity is carried out because a license was denied, was revoked, or was not renewed. The topic of invocation of authority will be discussed in the following chapter.

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[2] For an excellent discussion of burden of proof in regulatory administration, see articles by Charles H. Bobby in the (California) ADMINISTRATIVE LAW REVIEW: "Burden of Proof," Vol. 1966, No. 21, p. 814, and "Let's Look at Substance Rather than Form," Vol. 1965, No. 5, pp. 2–6.

VII. THE ACHIEVEMENT OF LICENSING GOALS[1]

One of the greatest dangers of the administrative process is that an agency through lethargy or through immoderate yielding to the influences of the regulated group may thwart the democratic will by acting only when prodded by private interest . . .

KENNETH CULP DAVIS

A GOOD LAW, well-formulated standards, sound administrative organization, and proper carrying out of the licensing process are not enough. To achieve the goals of child care licensing, there are four other important needs: adequate funding, qualified staff, community education, and clear but judicious invocation of authority.

Adequate funds

No licensing program can be administered well without enough funds to support statewide implementation of its policies and movement toward its stated goals.

Adequate funding depends on a number of interrelated administrative processes. Professional staff must be able to define the licensing job, both its core of mandated activities and those supportive activities which enrich its potential for improving care of children, in such a way that staffing needs can be realistically determined and convincingly presented for budget consideration. The department must ensure effective communication between program and fiscal units so that they can work together effectively to carry out the program, not only within fiscal limits but also within the strategies appropriate to budget preparation. The department should not lose sight of the possibilities for support of budget requests by advisory groups on licensing or standards, by associations of persons and agencies providing out-of-home care, and by national agency spokesmen.

There should be an identifiable licensing budget for the information of licensing personnel as well as for purposes of administration. This helps to identify the service, to focus on accountability, and to bring licensing into agencywide planning.

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[1] Partly derived from the teaching document by Class and Binder, "The Licensing Responsibility in Public Welfare."

Qualified staff

Building a professionalized, expert, child care licensing staff involves careful personnel selection, on-the-job training, and establishment of employment conditions conducive to stability.[2]

Prerequisites

The first qualification needed by the worker in child care licensing is that he be comfortable and skillful in working with policy, both in its application and its development. The clinically oriented social worker or the person who measures his achievement by the extent to which he can exercise highly individual judgment may find little satisfaction in applying licensing standards. Such a worker may become a source of confusion to the regulated group and a liability to the administrative agency. His primary focus should be to ensure that licenses are issued promptly to applicants who meet standards and that no one receives or retains a license unless he does meet the licensing requirements. There is often a temptation in licensing to waive physical standards for an applicant who shows warmth and understanding for children or for one who has superior educational preparation for the job. Such waivers, however, vitiate what has been accomplished through the thoughtful and responsible development of standards. A worker with keen appreciation of the importance of uniformity in applying standards would see it as his responsibility in these cases to support the applicant in efforts to achieve conformity to standards.

Consistency does not mean absence of discretion, however. It is impossible to write a set of standards in such a way that it can be applied automatically. The worker will be called upon time after time to decide such questions as: What is nourishing food? What constitutes a suitable program of recreation? What is an "attractively furnished" living room? Where is the dividing line between protecting a child and restricting his freedom? The point is that the decisions should be related as closely as possible to the standards, the agency guidelines, and accepted knowledge in the fields of child health and welfare.

The second qualification needed by a licensing worker is competence in reporting information to the department that will be helpful in further developing standards, policy, and practice. He should know how to pool his thinking with that of others and make use of communication channels within the agency. In any regulated field, from time to time problems which were isolated enough so that they

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[2] The training of nonprofessional staff for licensing operations is dealt with in Costin, Lela B., and Grauer, James R.: LICENSING OF FAMILY HOMES IN CHILD WELFARE: A GUIDE FOR INSTRUCTORS AND TRAINEES. Detroit: Wayne State University Press, 1965.

could be handled on an individual basis become widespread and call for policy decisions. The promptness and adequacy of such decisions depend to a large extent on the quality of the reporting from workers in the field and the attention directed to the reports by those responsible for policy.

There are many problems affecting children in care which licensing alone cannot solve, but which come forcibly to the attention of the licensing worker. The worker can be expected to point out the need and contribute to public understanding of the problem.

Third, a licensing worker must be capable of establishing good community relations. He must work with other regulatory agencies, such as building and safety, fire, and health departments; and with members of other professions such as doctors, teachers, nurses, dieticians and architects. He has to deal not only with individual applicants and license holders but with boards of directors of voluntary agencies and institutions and organized associations representing the regulated groups and users of facilities. All of these people represent not only their own interest, but also the public interest. The licensing worker must be aware of and interested in the community's participation.

The fourth qualification is knowledge of good practice and advanced thinking in child care. The worker will be called upon to give suggestions and consult with applicants on methods of meeting standards. As the licensees learn to respect and rely on him, he will also be called upon for information and opinions that lie outside the areas covered by standards. If he can respond competently to such requests, he will contribute to the improvement of practice beyond the minimum requirements. At no time, however, should the applicant or licensee be confused about what is covered by licensing standards and what remains in his discretion.

The idea that a social worker engaged in licensing should be a specialist in the licensed field must be tempered by the fact that many different vocations and professions are involved in the operation of facilities. Fire and safety engineers, sanitarians, physicians, group workers, dieticians, occupational therapists, educators, caseworkers and administrators are among those whose skills may be required. No one can be an expert in all of these things. One of the most important contributions that social work training can make to licensing is skill in bringing about cooperation among these various groups and a knowledge of resources that an applicant may use in order to work through problems.

Staff development

Assuming that front-line workers with the best possible qualifications have been employed, there still will remain the important job of staff development. Since licensing is a field not yet crystallized,

there are variations from one agency to another, even in such matters as the concept of the job itself. A worker coming into an agency will need to know how he is expected to function in this particular setting. He will also need to know how licensing is related to the other services and how to relate and work with other departmental staff, including research staff and community organization personnel.

The first step in a staff development program might well be clarification of the agency's philosophy of child care licensing, particularly the relationship of education and consultation to the basic job. If this is not done, there will be questionable variation in the activities carried on by different workers. Some will think of themselves as caseworkers applying a kind of therapeutic technique through which applicants will be induced to meet standards without the invocation of authority; others will see themselves as educational leaders, teaching those with whom they work about meeting the needs of children; others will spend a disproportionate amount of time in community activities; still others will attempt a routine application of requirements which will result in no advance in the welfare of the children in care.

A staff development program should give all workers a consistent understanding of what the standards are and what constitutes conformity to standards. An example of the kind of standard that may be variously interpreted is one that requires daily health inspection of children in a day nursery. One overzealous worker may insist that the nursery teacher look down the child's throat with a flashlight; others may accept a perceptive morning greeting, which is the most common practice. If there is not agreement throughout the agency on what is acceptable, licensees may become confused and hostile. If succeeding workers interpret requirements differently to a licensee, genuine hardship to the licensee may result.

Consideration might be given to having staff from other agencies concerned with conditions in child care facilities, such as the health department, participate systematically in the staff development program, to help interpret standards and to relate pertinent new developments in their fields.

In a dynamic licensing program, standards are raised as community acceptance will permit. Agency practice concerning matters which have not yet been incorporated in formal standards is constantly evolving. This necessitates an ongoing program for keeping staff members informed of developments and keeping those who are primarily responsible for enunciating policy in step with those who apply it.

Finally, the front-line worker will need to understand the organization of the administrative agency and, particularly, the communication channels. If he is to be an effective participant in the de-

velopment of standards and policies, he must know how to make his contributions and how they will be used.

Staff stability

Workers who have been carefully selected and thoroughly trained for licensing jobs represent a substantial investment by the administrative agency. Work with licensed facilities on particular problems, such as board organization, staffing, or building alterations, may extend over a period of months or even years. Rapid turnover in workers creates an impression of instability and inconsequentiality. It diminishes respect for both the agency and the individual worker. Excessive turnover also results in unevenness in the application of standards, since time and experience are necessary to absorb the philosophy of licensing as well as factual data. The status accorded the licensing job (the chief administrator's attitude toward the program has a major effect on this), the salaries paid, and the security of tenure will be key factors in attracting and holding well-qualified personnel.

Community education

A third important determining factor in the maintenance of standards is community education. The immediate objective of interpretation of the program to the community is to make the public aware that certain child care facilities and/or agencies must be licensed. This is essential for obtaining applications from those who should apply. Also making it widely known that unlicensed persons who engage in child placing and care are acting illegally would deter use of unlicensed facilities. Another objective of interpretation is to acquaint people with the reasons for licensing and the reasoning behind the legislation. Public understanding of the nature and importance of licensing protection is basic to support of legislation and its implementation.

Public information activities in relation to all kinds of welfare programs have been very weak in the past. Many people who now use services and institutions operated in violation of licensing laws probably are unaware that legal regulation exists. A mandatory requirement that licenses be posted helps to acquaint the public with the law. Persons who use facilities should be encouraged to ask about, and examine, the license. This is not only a good precaution for users but it enhances the practical value of the license to its holder, particularly when the facility is a commercial enterprise which must compete for users.

Since the public should assume that the possession of a license means that standards are met, they should be provided with some general knowledge about what these standards are and what the hazards

are against which protection has been provided. This kind of background helps users judge quality of service and sets up social pressures for maintaining standards. It is also important that consumers understand what is and is not covered by licensing standards.

Some public education will be accomplished by the regular staff of the licensing agency through day-by-day contacts in the community. They will not be able to do the whole job, however; their efforts need supplementation by specialists in communications.

A program of public information involves the use of media such as radio, television, newspapers and other printed material. This, in turn, requires specialized skills in writing and communicating and the development of working relationships with mass media. This cannot be successfully accomplished by persons whose primary responsibility is the application of standards on a case-by-case basis. The budget of the licensing agency should allow for the employment of public information specialists.

Invocation of authority

Failure to meet licensing standards may be due to the applicant's inability to meet requirements or to his willful defiance. In other instances the applicant may question the legality of specific standards or the jurisdiction of the licensing agency. In any case, since licensing requirements are based on legal prohibition of a specified activity except under conditions set by the law or administrative agency, the agency is responsible for invoking authority when these conditions are not met. Recognition of this responsibility and appropriate use of authority by the agency constitute the fourth important factor in the maintenance of standards.

When a license is denied or revoked, the affected party may, in most instances, ask for a fair hearing. If the facility is already in operation, usually it may continue until the results of the hearing are known. The hearing provides an opportunity for the administrative arm of the government to review the actions of its representatives to determine whether they have been fair and have acted in accordance with the agency's own rules and regulations. If the hearing upholds the revocation, the affected party may decide to carry the matter a step further and test in court the legality of the agency's action.

In the past, courts asked to review the actions of administrative agencies have sometimes ruled on the merits of the particular case, determining de novo the facts and making their own decision as to whether the individual concerned was or was not entitled to a license. Recently, some courts have confined themselves to ruling on whether the administrative agency acted within the authority conferred on it by the law. The question is not likely to be whether the

applicant or licensee violated a particular standard. The agency is assumed to be more competent than the court in deciding that question. What is generally reviewed and ruled upon is the legality of the standard itself, whether it comes within the limits set by the licensing law, whether it violates any legal rights of the individual, and whether the individual's right to due process of law has been observed.[3]

By testing its requirements in court, a licensing agency can strengthen its position in the community and broaden its understanding of the public will concerning child care licensing. Judicial review is also useful as a gauge of whether the agency has formulated certain kinds of requirements clearly enough to withstand a test in court, for example, the requirement of personal fitness of an applicant. Social workers believe that their professional knowledge provides them with competence in judging whether certain kinds of personalities will have a harmful effect on children under care and they regard personal fitness as something to be judged independently of the quality of the physical surroundings. If one of the licensing requirements is to be personal fitness, the possibility of a court test should be an incentive to social workers to refine their skill in judging this quality, to demonstrate this skill, and to express the standard in such a way that it can be upheld.

Taking court action in a child care licensing situation is in keeping with America's basic political philosophy of separation of powers. A child care licensing program begins with legislative provisions. The administrative branch of the government is given the responsibility for implementing the provisions. It is left to the adjudicative process to determine whether the administrative agency has acted properly, i.e., within its legislated authority. Judicial review of significant areas of controversy is perhaps one of the most important means of defining and legitimatizing a welfare program.

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[3] For an authoritative discussion of this issue, see Davis, Kenneth Culp: ADMINISTRATIVE LAW. St. Paul, Minn.; West Publishing Co., 1950 (esp. pp. 868–929).

HISTORICAL NOTE[1]

THIS is a brief account of the development of child care licensing into a major responsibility of the State department of public welfare in most States.

Beginnings

American child care licensing might be said to have developed out of very early public efforts on behalf of children, starting with the colonial poor law provisions for the indenture and apprenticeship of dependent, delinquent or neglected children. These provisions and other early measures were definitely protective in respect to the care of children out of their own homes, although not regulatory or licensing in nature.

The establishment of the early State boards of charity during the Civil War and post-Civil-War period might be considered the first step of a regulatory approach to child care. The boards of charities, starting with Massachusetts in 1863, provided for State inspection and reporting but not licensing of certain types of child care facilities. New York and Ohio established boards of charities in 1867. Seven more States had created similar boards by 1873.[2] Massachusetts prohibited detention of poor children in almshouses in 1879. The Ohio Board of Charities' seventh annual report in 1882 referred to the extreme care necessary in placing children in family homes. The New York Board of Charities operated on an 1884 statutory provision that authorized county superintendents or town overseers of the poor to remove a child from a subsidized institution if the care given to the child was found to be unsatisfactory.

One of the early methods used in regulating private agencies was the requirement that articles of incorporation be approved. The New York law, for example, required approval of the statement of purpose, the basis of membership, the bylaws, and a report of the work of the agency to the secretary of State or the corporation commissioner. It conferred on the agency the rights of perpetual succes-

[1] Derived in part from Sindhu Phadke's dissertation, "Licensing of Child Care in California: 1911–1961," School of Social Work, University of South California, 1963. Major sources include: Abbott, Grace: THE CHILD AND THE STATE, (Chicago: University of Chicago Press, 1938); and Thurston, Henry W.: THE DEPENDENT CHILD, (New York: Columbia University Press, 1930).

[2] See Schottland, Charles I.: Public Welfare. In SOCIAL WORK YEARBOOK: 1957. New York: National Association of Social Workers, 1957, p. 473. Also see Sanborn, F. B.: Work Accomplished by the State Boards. In PROCEEDINGS OF THE NATIONAL CONFERENCE OF CHARITIES AND CORRECTION, 1887, pp. 75–105.

sion, legal entity, purchasing, holding or conveying estate and having a common seal.

The subsidy system [3]

The development of child care licensing was related to public subsidization of private child care facilities. From early in our history the foster care of children under private auspices was furthered through the granting of subsidies by State or local government agencies. There is a record of New York State giving $500 to an orphan asylum society in 1811. By 1901 subsidies were being granted in all States and territories except for four in the West.

Public scandals over abuse of children in some of the subsidized institutions caused concern around the turn of the century. Evidence of political pressures and evils of the spoils system stimulated demand for regulation of the subsidized agencies. Some of the controls instituted were: minimum standards of care, requirement of reports of admission and discharge policies, and visitation and inspection over subsidized agencies.[4] Public subsidization of private institutions was one of the crucial welfare issues in California during the 19th century, raising a demand for State regulation of the institutions.

Early licensing legislation

When the State boards of charities and similar agencies became aware of undesirable conditions in some of the boarding homes and State-subsidized institutions, legislation was enacted requiring licensing of child care by local officials. In 1885 Pennsylvania passed a law prohibiting any person from offering care to more than two children under the age of 3 without a license from the mayor of the town, a justice of the peace or a magistrate of the locality. This law stated:

> **Any person, other than an institution duly incorporated for the purpose, who shall engage in the business of receiving, boarding or keeping infant children under the age of three years for hire or reward, who shall receive or take for such purpose more than two such children without having first obtained a license in writing to do so from the mayor of the town or a justice of the peace or a magistrate of the locality wherein such child is to be received, boarded or kept, shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one hundred dollars.**[5]

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[3] A major source for this topic was Johnson, Arlien: PUBLIC POLICY AND PRIVATE CHARITIES. Social Service Monographs, No. 16. Chicago: University of Chicago Press, 1931.
[4] Johnson, Arlien: Public Funds for Voluntary Agencies. In PROCEEDINGS OF THE NATIONAL CONFERENCE ON SOCIAL WORK, 1959, pp. 83–102.
[5] Laws of the Commonwealth of Pennsylvania, No. 30, Section 2.

Massachusetts, in 1892, passed a law which required anyone wishing to board two or more infants under 2 years of age to obtain a license from the State Board of Lunacy and Charity. In 1899 Illinois made it mandatory that the articles of incorporation of organizations providing care for dependent children be approved by the State Board of Commissioners of Public Charity. Ohio, in 1908, required licensing of lying-in hospitals, and Indiana, in 1909, passed a law requiring licensing of boarding homes and institutions for children.

The national climate

The national climate of the last two decades of the 19th century was favorable to State regulation of private enterprise generally. The populist movement gave a heightened expression to protests against trusts, monopolies, and unrestrained private enterprise, and to the need for State regulation in order to safeguard the interests of the common man.[6] State regulation of private agencies generally, and those offering care to children specifically, was supported by the National Conference of Charities and Corrections, which was organized in 1873.[7] In the field of child welfare a significant landmark was the organization in 1909 of the first White House Conference on the Care of Dependent Children. The recommendations of this Conference emphasized that children should be cared for in their own homes as far as possible. When institutional placement was necessary, the use of institutions on the cottage plan was advocated. Other recommendations were for State inspection of the work of all agencies which cared for dependent children, and the incorporation of such agencies with prior approval by a suitable State board.

The establishment of the United States Children's Bureau in 1912 was an important factor in the development of licensing programs in child care.[8] The Bureau gave considerable attention to encouraging the development of standards for various types of child care, as well as the establishment of children's code commissions or child welfare committees in a number of States.

The Child Welfare League of America, organized in 1920, has also become an important influence in improving standards of child care. The League has promoted development of standards in child

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[6] Hofstadter, Richard: THE AGE OF REFORM. New York: Vintage Books, 1955, pp. 60–82.

[7] From the PROCEEDINGS OF THE NATIONAL CONFERENCE OF CHARITIES AND CORRECTION of various years, see: Hoyt, Charles S.: President's Address (1888); Randall, C. D.: Michigan: The Child: The State (1888); Report of the Committee on State Control and Supervision (1904); Barrett, Kate Waller: The Need for State Supervision of Both Public and Private Charities (1908); Kelso, Robert W.: Supervising and Licensing of Private Charities (1917).

[8] U.S. Dept. of Health, Education, and Welfare, Social and Rehabilitation Service, Children's Bureau: FIVE DECADES OF ACTION FOR CHILDREN: A HISTORY OF THE CHILDREN'S BUREAU. Children's Bureau Publication No. 358. Washington, D.C. (20402): U.S. Government Printing Office, 1962.

care agencies through special research projects, community organization, and consultation; publication of desirable standards for different types of child care services;[9] and cooperation with national, State and local agencies.

By 1920, there was in most States some regulation of one or more forms of child care. These early licensing programs often tended to be weak and impractical. Licensing agencies did not fully understand their responsibility and did not seem to know how to use either legal counsel or the courts to clearly define their powers. Most important, licensing staffs were generally too small to implement the law or lacking altogether. There was little recognition of the need for specialized knowledge and skill. Even so, many abuses, including the notorious "baby farms," were eliminated.

Considerable progress was made in voluntary child care during the 1920's, especially in respect to professionalization, placement services, and improved organization of the agencies. This made possible the raising of licensing standards by virtue of the fact that these standards were now maintained in some agencies.

Since 1935

In some ways, the passage of the Social Security Act in 1935 constituted a turning point in the history of child care licensing in the United States. As a result of the Federal grant-in-aid funds to the States to establish, extend and strengthen child welfare services, it was possible for the States to acquire more and better personnel to carry out all child welfare services, including licensing.

In addition to better staffing, child care licensing since 1935 has advanced in two other ways. The jurisdiction of child care licensing has greatly increased, particularly since day care facilities, which increased greatly after World War II, were to a large extent brought under child care licensing statutes. Secondly, the profession of social work undertook a reexamination of its practices. The "passive" approach of social work of the 1930's gave way somewhat to a philosophy of "reaching out," especially in respect to protective services. This had an activating effect on licensing.

One constant feature of child care licensing over the years has been the tendency of legislatures to assign the responsibility to the State board of charities or its successor, the State department of public welfare. In the early 1900's the licensing function was usually located in the State board of charities and corrections. In some States, a division of child welfare was established within the State board to administer the licensing law. After 1935, with the advent of more comprehensive public welfare programs, including child welfare

[9] Child Welfare League of America: STANDARDS FOR DAY CARE SERVICE (1960) and STANDARDS FOR FOSTER FAMILY CARE SERVICES (1959), New York.

services, licensing became more clearly identified as a public child welfare function. As of the 1960's virtually every State public welfare department carries some responsibility for child care licensing, often with the participation and assistance of other public departments.

SELECTED BIBLIOGRAPHY FOR USE IN STAFF DEVELOPMENT

Abbott, Grace: THE CHILD AND THE STATE. Chicago: University of Chicago Press, 1938, pp. 17–20, 123–128, 152–154.

American Public Welfare Association: Public Welfare Responsibility for Child Care Licensing. PUBLIC WELFARE, April 1963, Vol. 21, pp. 33–36.

Archer, Oliver M.: The Nature of Authority in State Supervision. PUBLIC WELFARE, April 1950, Vol. 8, pp. 81–84.

Binder, Gertrude: How Regulation Differs from Accreditation. THE MODERN HOSPITAL, May 1960, Vol. 94, pp. 113–114, 168.

Binder, Gertrude: Social Work Process in Licensing Welfare Services. SOCIAL CASEWORK, October 1954, Vol. 35, pp. 347–354.

Binder, Gertrude, and Class, Norris E.: Maintenance of Regulatory Standards for Welfare Services. SOCIAL CASEWORK, June 1958, Vol. 39, pp. 342–349.

Binder, Gertrude, and Class, Norris E.: The Nature of Welfare Licensing Laws. SOCIAL CASEWORK, May 1958, Vol. 39, pp. 267–273.

Binder, Gertrude, and Class, Norris E.: Regulatory Standards for Welfare Services. SOCIAL CASEWORK, November 1957, Vol. 37, pp. 468–473.

Bowen, Ruth: Comments: Licensing as Minimum Service in Independent Boarding. CHILD WELFARE, June 1958, Vol. 37, pp. 24–25.

Bulwinkle, Aline S.: The Child, His World, and His Potential. PUBLIC WELFARE, April 1967, Vol. 25, pp. 105–109.

Class, Norris E.: Foster Child Care as a Public Welfare Responsibility. PUBLIC WELFARE, October 1962, Vol. 20, pp. 217–220 and 236–237.

Class, Norris E., and Binder, Gertrude: Foster Care Licensing in Public Welfare. CHILDREN, January-February 1961, Vol. 8, pp. 28–31.

Class, Norris E., and Binder, Gertrude: THE LICENSING RESPONSIBILITY IN PUBLIC WELFARE. Los Angeles: University of Southern California School of Social Work, 1957. (Mimeo.)

Colorado Legislative Council: REPORT TO THE COLORADO GENERAL ASSEMBLY: LICENSING AND REGULATION OF CHILD CARE FACILITIES. Research Publication No. 70. Denver: The Council, December 1962.

Costin, Lela B.: Performance of Child Care Licensing Tasks. PUBLIC WELFARE, October 1967, Vol. 25, pp. 307–310.

Costin, Lela B.: Supervision and Consultation in the Licensing of Family Homes. CHILD WELFARE, January 1967, Vol. 41, pp. 10–15.

Costin, Lela B.: Training Nonprofessionals for a Child Welfare Service. CHILDREN, March-April 1966, Vol. 13, pp. 63–68.

Costin, Lela B., and Gruener, Jennette: LICENSING OF FAMILY HOMES IN CHILD WELFARE: A GUIDE FOR INSTRUCTORS AND TRAINEES. Detroit: Wayne State University Press, 1965.

DeShazo, Cobb: Licensing Reaches Out. CHILD WELFARE, February 1961, Vol. 40, pp. 26–27.

Emerson, Lola B.: Teamwork in Licensing Children's Agencies. CHILDREN, July-August 1956, Vol. 3, pp. 135–138.

Fenske, Virginia: State Protects Children Living Away from Their Homes. THE CHILD, March 1948, Vol. 12, pp. 135–137.

Fenske, Virginia: Supervision and Licensing of Institutions and Homes for Children. *In* PROCEEDINGS OF NATIONAL CONFERENCE ON SOCIAL WORK, 1947, pp. 324–332.

Ferguson, Dwight H.: Maryland Evaluates Licensing of Agencies and Institutions. PUBLIC WELFARE, October 1946, Vol. 4, pp. 227–230.

Fraser, Gladys G.: THE LICENSING OF BOARDING HOMES, MATERNITY HOMES AND CHILD WELFARE AGENCIES. Chicago: University of Chicago Press, 1937.

Freund, Ernst: Licensing. *In* ENCYCLOPEDIA OF SOCIAL SCIENCES, Vol. 9, pp. 447–451.

Hanwell, Albert F.: Public Policy and Independent Foster Home Licensing. CATHOLIC CHARITIES REVIEW, January 1967, p. 4.

Hughes, Edna, Ferguson, Dwight H., and Gula, Martin: LICENSING: A DYNAMIC FOR CHANGE. New York: Child Welfare League of America, 1962. (Includes extensive bibliography)

Jambor, Harold A.: LICENSED CHILD-CARING AGENCIES PARTICIPATING IN FORMULATION OF STANDARDS. Unpublished doctoral dissertation, University of Southern California School of Social Work, 1965.[1]

Jambor, Harold A.: Theory and Practice in Agency Participation in the Formulation of Licensing Standards. CHILD WELFARE, December 1964, Vol. 43, pp. 521–528, 538.

Johnson, Arlien: PUBLIC POLICY AND PRIVATE CHARITIES. Chicago: University of Chicago Press, 1931.

Lewis, Lucile: The Strengths in Day Care Licensing. CHILD WELFARE, June 1959, Vol. 38, pp. 10–15.

Moore, Winifred A.: What Makes a Good Day Care Licensing Law? CHILD WELFARE, April 1958, Vol. 37, pp. 27–30.

Ostomel, Maurice J.: Los Angeles Coordinates Its Licensing. PUBLIC WELFARE, April 1949, Vol. 7, pp. 74–77.

Oviatt, Boyd: PRIVATE MENTAL HOSPITAL LICENSING LAW. Unpublished doctoral dissertation, University of Southern California School of Social Work, January 1967.

Phadke, Sindhu V.: LICENSING OF CHILD CARE IN CALIFORNIA, 1911–1961. Unpublished doctoral dissertation, University of Southern California School of Social Work, June 1963.

Ricci, Anthony E., and Briggs, Eleanor S.: Development of Standards for Child Caring Agencies. CATHOLIC CHARITIES REVIEW, March and April 1963, Vol. 47, pp. 5–9 and 4–7.

Turitz, Zitha R.: Values, Assumptions, and Concepts Underlying the Revised Standards for Foster Family Care Service. CHILD WELFARE, May 1959, Vol. 38, pp. 8–13.

U.S. Dept. of Health, Education, and Welfare, Social and Rehabilitation Service, Children's Bureau: LICENSED DAY CARE FACILITIES FOR CHILDREN. Report of a National Survey of Departments of State Governments Responsible for Licensing Day Care Facilities. Washington, D.C. (20201): Children's Bureau, 1962.

Welch, Kathryn H.: THE MEANING OF STATE SUPERVISION IN THE SOCIAL PROTECTION OF CHILDREN. U.S. Dept. of Health, Education, and Welfare, Social and Rehabilitation Service, Children's Bureau Publication No. 252. Washington, D.C. (20402): U.S. Government Printing Office, 1940.

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[1] Copies of the dissertations cited in this list may be purchased from University Microfilms, Ann Arbor, Michigan.

U.S. GOVERNMENT PRINTING OFFICE : 1969 O—331-741